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The law passed by the late Missouri legislature, aimed at corrupt practices in elections, is attracting general notice and commendation, by reason of the fact that it is the most radical measure upon the subject that has yet been enacted by any of the States. It seems that only four other States have similar statutes and none of them is equal to that of Missouri in point of stringency. It provides that every person who offers a bribe or otherwise illegally attempts to influence a voter's conduct shall be deemed guilty of a felony, and shall be punished by a fine of $500 and imprisonment in the penitentiary for not less than two or more than five years. Candidates or persons seeking nominations are forbidden within ten days preceding a primary, or within sixty days prior to an election, to give to any person for the purpose of influencing his vote "any meat, drink or entertainment," and this applies as well to promises of such bribes as to the actual giving of them. Every person accepting a bribe, either before or after an election, for his own vote or for service in securing the votes of others, is subjected to a penalty of imprisonment for not less than one month or more than one year. Unlike the most of such laws, it will be observed, this one provides punishment for both parties to a transaction of bribery; and it also applies the same penalty to corrupt acts in the way of inducing men to refrain from voting as to the direct purchasing of votes.

It is in the matter of expenditures for election purposes, however, that this law is principally remarkable. Full publication of all campaign disbursements, both by candidates and by committees, is required, under oath; and no certificate of election can be issued to any successful candidate until he has made this return. There is another section which limits the amount of campaign expenditures —the first instance of such legislation in this country. It is provided that no candidate for congress or for any public office in the State or in any county, district or municipality shall expend more than $100 where the number of voters is 5,000 or less, $2 for each 100 voters over 5,000 and under 25,000, $1 for each 100 voters over 25,000 and under 50,000, and 50cts for each 100 voters over 50,000. The person receiving the next highest number of votes to that cast for his successful competitor can, at any time during his term of office, by affidavit to the Attorney-General, cause an action to be brought for violation of this section, and upon proper proof the guilty person will be ousted from office.

This act, together with the Australian ballot system now in force, should make candidates for office in Missouri very circumspect, and its enforcement will be awaited with interest in all parts of the country.

The "*Weekly Review*" thinks that the Louisiana laws concerning women and their rights of property "cannot by any stretch of language be called civilized," and it cites a recent case wherein this "monstrous absurdity was strikingly illustrated." In that case it appears that a negro had robbed a house of a quantity of female wearing apparel. The thief was caught and brought into court to answer to an indictment for stealing. There was no doubt of the facts, and no difficulty in proving them beyond a reasonable doubt; but the indictment happened to charge that the articles stolen were the property of a woman. The defense established the facts that the woman at the time of the robbery had a husband living, and that she had not been emancipated by decree of court so that she could hold property; whereupon the court ordered the jury to acquit the thief, because the property was stolen from a woman who was not allowed by law to own anything, and who, owning nothing, could not be robbed. While not very familiar with the intricacies of the Louisiana law concerning married women, we have reason to believe that the statement of the case as made above is not without foundation, and that the legislators of the State mentioned would do well to consider the propriety of so amending the law affecting the interests of married women as to bring it within modern lines.

NOTES OF RECENT DECISIONS.

LIMITATION OF ACTIONS—DEFENSE BY AND AGAINST THE UNITED STATES.—In State v. Schwalby, 13 S. C. Rep. 418, it is held by the Supreme Court of the United States that the statute of limitations, although it cannot be pleaded against the sovereign except by consent, may be pleaded for the benefit of the sovereign, and that, when a suit against the sovereign is not permitted, a protest or a proper application for redress will prevent the running of the statute in its favor as a suit would in the case of an individual. It is also held that although the United States are not bound by the laws of a State, the word "person" in a State statute of limitations includes them as a body politic and corporate and they may take advantage of such statute, and that possession for the statutory period by army officers of land acquired by the United States for a military reservation although it is in fact for the United States, is adverse as to other claimants and a complete defense to an action of trespass to try title brought against such officers. Mr. Justice Field dissented. Mr. Chief Justice Fuller, rendering the opinion of the court, says as to the main question:

In The Siren, 7 Wall. 152, Mr. Justice Field, who spoke for the court, in adverting to the familiar rule of the common law that the sovereign cannot be sued in his own courts without his consent, and the ground upon which the rule rested, said: "This doctrine of the common law is equally applicable to the supreme authority of the nation, the United States. They cannot be subjected to legal proceedings at law or in equity without their consent; and whoever institutes such proceedings must bring his case within the authority of some act of congress. Such is the language of this court in U. S. v. Clarke, 8 Pet. 444. The same exemption from judicial process extends to the property of the United States, and for the same reasons. As justly observed by the learned judge who tried this case, there is no distinction between suits against the government directly and suits against its property."

If, then, this suit had been directly against the United States, or the property of the United States, it could not have been maintained; and it is only upon the proposition that it was brought, not against the United States, but against the officers of the United States as individuals, although holding possession of the property under their authority, and as belonging to them, that it proceeded to judgment. The district attorney of the United States, acting, as he alleged, "by and through instructions from the attorney general of the United States," filed certain pleas on behalf of the United States, among others, of limitation and for allowance for valuable improvements. No question seems to have arisen in the State district court as to the authority of the district attorney to do this. The court ruled that the United States could not plead the statutes of limitation, and therefore struck those pleas out, but sustained the plea claiming an allowance for improvements, and rendered judgment in favor of the United States for the value thereof. The Supreme Court of Texas held that, as the instructions of the attorney general were not found in the record, and no act of congress empowering him to make the United States a party, either plaintiff or defendant, to an action in a State court was referred to, the United States could not be regarded as a party, and therefore reversed the judgment below, and rendered judgment dismissing the United States from the case. The error assigned to this action of the supreme court has not been pressed by counsel for the government, and we are not called upon to express any opinion upon it. We should remark, however, that from a very early period it has been held that even where the United States is not made technically a party under the authority of an act of congress, yet, where the property of the government is concerned, it is proper for the attorney for the United States to intervene by way of suggestion, and in such case, if the suit be not stayed altogether, the court will adjust its judgment according to the rights disclosed on the part of the government thus intervening. Such was the leading case of The Exchange, 7 Cranch, 116, 147, where the public armed vessel of a foreign sovereign having been libeled in a court of admiralty by citizens of the United States to whom she had belonged, and from whom she had been forcibly taken in a foreign port by his order, the district attorney filed a suggestion stating the facts, and, the circuit court having entered a decree for libelants disregarding the suggestion, this court, upon an appeal taken by the attorney of the United States, reversed the decree and dismissed the libel, and Mr. Chief Justice Marshall, in delivering the opinion of the court, said: "There seems to be a necessity for admitting that the fact might be disclosed to the court by the suggestion of the attorney for the United States."

Probably the instructions here were that the district attorney should make defense for Gen. Stanley and his fellow officers, and, in addition, he thought it wise to bring the rights of the United States to the attention of the court by application in their name.

The argument for the plaintiffs in error is confined to the disposition of the pleas setting up the statutes of limitation, in respect of which the decision did not turn upon the question whether on the facts the bar was or was not complete, but upon the view that, although, as between individuals, a perfect defense might have been made out, it could not be availed of by or under the United States.

By the Texas statute relied on it was provided that every suit to recover real estate "as against any person in peaceable and adverse possession thereof under title or color of title shall be instituted within three years next after the cause of action shall have accrued, and not afterwards." "Title" was defined to mean a regular chain of transfer from or under the sovereignty of the soil, and "color of title" to mean a consecutive chain of such transfer down to the person in possession, without being regular; as if one or more of the muniments were not registered or not duly registered. "Peaceable possession" was described as "such as is continuous, and not interrupted by adverse suit to recover the estate," and "adverse possession" was defined as "an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another."

The statute also provided that five years' peaceable and adverse possession of real estate, "cultivating, using, or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered," should be a bar; and that ten years' like peaceable and adverse possession, with cultivation, use, or enjoyment, should have a like result; and also that, whenever in any case the action of a person for the recovery of real estate was barred, the person having such peaceable and adverse possession should "be held to have full title, precluding all claims." 2 Sayles' Civil St. (Tex.) p. 109, tit. 62, ch. 1.

The Supreme Court of Texas was of opinion that the bar of the statute could not be interposed by or under the United States, because the United States are not bound by such statutes, as well as because no action could be brought against the United States.

The rule that the United States are not bound, and the reason for it, are thus given in U. S. v. Nashville Ry. Co., 118 U. S. 120, 125, 6 Sup. Ct. Rep. 1006: "It is settled beyond doubt or controversy, upon the foundation of the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided, that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless congress has clearly manifested its intention that they should be so bound." And this doctrine was declared by the court in U. S. v. Insley, 130 U. S. 263, 266, 9 Sup. Ct. Rep. 485, to be "applicable with equal force, not only to the question of the statute of limitations in a suit of law, but also to the question of laches in a suit in equity."

To the same effect, Mr. Justice Story, in U. S. v. Hoar, 2 Mason, 311, said: "The true reason, indeed, why the law has determined that there can be no negligence or laches imputed to the crown, and therefore no delay should bar its right (though sometimes asserted to be because the king is always busied for the public good, and therefore has not leisure to assert his right within the times limited to subjects,—1 Bl. Comm. 247), is to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss by the negligence of public officers. And though this is sometimes called a 'prerogative right,' it is in fact nothing more than a reservation or exception, introduced for the public benefit, and equally applicable to all governments. . . . But, independently of any doctrine founded on the notion of prerogative, the same construction of statutes of this sort ought to prevail founded upon the legislative intention. Where the government is not expressly or by necessary implication included, it ought to be clear, from the nature of the mischiefs to be redressed or the language used, that the government itself was in contemplation of the legislature, before a court of law will be authorized to put such an interpretation upon any statute. In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens, and in most cases the reasoning applicable to them applies with very different, and often contrary, force to the government itself."

But, as observed by Mr. Justice Strong, delivering the opinion of the court in Savings Bank v. U. S., 19 Wall. 227, 239, while the king is not bound by any act of parliament unless he be named therein by special and particular words, he may take the benefit of any particular act though not named; and he adds that the rule thus settled as to the British crown is equally applicable to this government, and that so much of the royal prerogative as belonged to the king in his capacity *parens patriae*, or universal trustee, enters as much into our political State as it does into the principles of the British constitution.

The general rule is stated in Chitty on the Law of the Prerogatives of the Crown, 382, clearly to be "that, though the king may avail himself of the provisions of any acts of parliament, he is not bound by such as do not particularly and expressly mention him; for it is agreed in all our books that the king shall take benefit of any act, although he be not named." Case of a Fine, 7 Coke, 32*a*; Magdalen College Case, 11 Coke, 68*b*; Queen & Buckberd's Case, 1 Leon, 150; 1 Bl. Comm. 262.

We think there is nothing to the contrary in Rustenjee v. Queen, 1 Q. B. Div. 487, where, by a treaty between the queen of England and the emperor of China, the emperor had paid to the British government a sum of money on account of debts due to British subjects from certain Chinese merchants, who had become insolvent, and it was held that a petition of right would not lie by one of the British merchants to obtain payment of a sum of money alleged to be due to him from one of the Chinese merchants, and that the statute of limitations did not apply to a petition of right. The political trust with which her majesty was charged in respect of her own subjects afforded no basis for the prosecution in a court of a claim as against a debtor or trustees, and, of course, inhabitants had no application. Indeed, the form of proceedings by a petition of right, even as simplified and regulated by 23 & 24 Vict. ch. 34, is so far variant from proceedings between subject and subject as to give adjudications thereunder but slight, if any, bearing upon the question under discussion. Tobin v. Queen, 14 C. B. (N. S.) 505.

It was in view of the ancient rule and its derivation that the Supreme Court of Wisconsin, in Baxter v. State, 10 Wis. 454, held that while the statute cannot be set up as a defense to an action by the government, this rule being founded upon the public good and the protection and preservation of the public interest, instead of furnishing any support for the position that as a defendant the State could not have the benefit of the statute, would fully sustain the opposite conclusion.

And so in People v. Gilbert, 18 Johns. 227, it was pointed out by way of illustration that the same rule of construction applied to the statute concerning costs which the State may recover, though not obliged to pay them, because not concluded in the general terms of the statute.

It is obvious that the ground of the exemption of governments from statutory bars or the consequence of laches has no existence in the instance of individuals, and we think the proposition cannot be maintained that because a government is not bound by statutes of limitation, therefore the citizen cannot be bound as between himself and the government.

BANKS — CHECK PAYABLE TO FICTITIOUS PAYEE—CERTIFICATION—BONA FIDE HOLDER. —In Meridian Nat. Bank v. First Nat. Bank, decided by the Appellate Court of Indiana, it is held that where a check is drawn, payable to a person under a fictitious name, in payment for property which it afterward appears he has stolen, and the bank at which it is payable certifies the check, a bank which sub-

sequently cashes such check, on its being indorsed by the payee with his fictitious name, acquires a valid title thereto, which it can enforce against the certifying bank; it appearing that, though the payee acted all through under a fictitious name, yet the check was received by the identical person to whom its drawer intended to deliver it, and was by him indorsed in the name in which it was issued to him, and he, as was intended by the drawer received the benefit of it. Gavin, J., says:

It seems to be well established that as a general rule the certification of a check in the hands of the payee, the body of which is unaltered, releases the drawer from further liability, and creates a direct liability from the bank to the payee, while as between the bank and the drawer it operates as a payment, to that extent, on his account; and although, prior to its being certified, the check may be countermanded by the drawer, after its certification it has passed beyond his control, and he no longer has power to countermand its payment. Daniel, Neg. Inst. §§ 5, 1601-1603; Morse, Banks, § 414; Van Schaack Bank Checks, 91, 92. Whether, or not the liability of the certifying bank may, under certain circumstances, extend even further, we need not now determine. It is said in Born v. Bank, 123 Ind. 78, 24 N. E. Rep. 173, "that the drawer of a check is released if the holder, instead of presenting it for payment himself, procures it to be certified by the bank upon which it is drawn. If the holder elects to procure the certification of the check it becomes in his hands substantially a certiffcate of deposit. By his own hand he makes the bank his debtor, and releases the drawer of the check."

The principal question upon which the rights of the parties in this case depend is whether or not the indorsement of the check by Milburn under the assumed name of Smith, and without identification was such an indorsement as was effectual to pass to the appellee the title to the check. If it was, it will then be unnecessary for this court to determine a number of the propositions advanced by counsel on each side. The position of counsel for the appellant may best be stated in their own language: "In other words, the Shelbyville Bank's contentions is that the acceptance of an unindorsed check implies three things: (1) That the signature of the maker is genuine; (2) that the maker has money to his credit which the bank will retain until the check is presented for payment; (3) that the holder is the payee, and is entitled to receive the money,—while the contention of the Meridian Bank is that the certification of the check, unindorsed, does not waive, but is subject to, identification and legal indorsement (Daniel, Neg. Ins. § 1607*a*), and that as the check was given for stolen cattle, and was not made payable to the real person, William C. Milburn, but to no person, without its knowlege and for a fraudulent purpose, the indorsement was invalid, and the same in law, as if it had been passed over the counter of the Shelbyville Bank unindorsed, in which case the transferee takes it subject to all equities and defenses." Under the view which we have taken of this case, it is not required of appellee, in order to sustain the judgment of the court below, that he should maintain the proposition No. 3, as stated by appellant's counsel. Neither is it necessary that we should determine whether or not it would be permissible to the bank, on the ground of want of consideration or fraud, as between the payee and the drawer, to defend against a check certified by it after it has passed into the hands of an innocent holder, even though unindorsed. It is settled law that the *bona fide* assignee by indorsement for value takes such paper freed from any equities existing between the original parties. Daniel, Neg. Inst. §§ 1608-1652; Morse, Banks, § 419; Van Schaack, Bank Checks, 63-89. Under the facts of this case, we think that the indorsement of the check by the man to whom it was actually issued, and by whom the drawer intended that the money should be received, was an effectual indorsement to pass to the Shelbyville Bank the title to the check, and the indorsement was not, as to it, invalidated by reason of the payee acting under an assumed and fictitious name, when he was not really impersonating any other individual. The check was intended for a person, not a name. Names possess neither personality nor existence. They but serve to identify individuals. The check was received by the identical person or individual to whom its drawer intended to deliver it, and was by that person indorsed in the name in which it was issued to him. Even the drawer did not have in mind, as the payee, any other or different individual, whom he erroneously believed the person to whom he delivered the check to be. That it is the identity of the person, and not of the name, which controls the right to the check, is shown by some of the cases cited by counsel,—those of Graves v. Bank, 17 N. Y. 205, and Bank v. Holtsclaw, 98 Ind. 85, where a check or draft was drawn and intended to be sent to one man, but by some mistake was received by another, of the same name, who transferred it; but his transfer was held to pass no right to the paper, even in hands of an innocent holder, because, although the names were the same, the persons for whom the paper was intended were different. An action may be maintained upon an instrument, although executed to the party by a name other than his right one, if it was really intended to be executed to him. Wooster v. Lyons, 5 Blackf. 60; Leaphardt v. Sloan, *Id.* 278; Rhyan v. Dunnigan, 76 Ind. 178; Hasselman v. Development Co. (Ind. App.), 27 N. E. Rep. 318.

In support of their proposition that the indorsement of this check was a mere forgery, and therefore invalid and ineffectual, counsel rely largely upon the case of Armstrong v. Bank, 46 Ohio St. 512, 22 N. E. Rep. 866, as affording, to use their own expression, "a full discussion of the point under consideration." There, one Grimes fraudulently represented himself to the agent of one Brown, a fictitious person, and by false representations obtained from Armstrong a check payable to his supposed principal, Brown. Grimes indorsed the fictitious name, "William Brown," on that check, and presented it to the bank, who paid it. It was held, giving to the case the construction most favorable to appellant, that the charge against Armstrong on account of the check should be canceled, regarding the indorsement as a forgery. There is between that case and the one in hand a marked distinction, in this: that there Armstrong, the drawer of the check, did not intend to make the check payable to the man to whom she delivered it, and who afterwards indorsed it, but to another and a different person whom she supposed to exist, although he really had no existence. There the drawer did not intend, by the name used as that of the payee, to designate the man to whom she delivered the check, and who afterwards negotiated it. There it was not intended by the drawer of the check

that the person to whom she delivered it, and who negotiated it, should receive the proceeds of the check. Here it was plainly intended that the man to whom the drawers delivered the check should be the beneficiary of it. The case of Dodge v. Bank, 30 Ohio St. 1, 5, upon which the Armstrong case is largely founded, recognizing the principle by which we govern this case, says that the bank paying the check on the forged indorsement "had the right to show, if it could, that the person to whom the check was delivered was in fact the person whom the drawer intended to designate by the name of Frederic B. Dodge." Counsel for appellant have cited no case which comes any nearer to the question in hand than the Armstrong Case, nor have we been able to find any favorable to them. Several general statements are taken from the text-books, to the effect that to sign the name of a fictitious or non-existing person is a forgery; citing Byles, Bills, 333; Daniel Neg. Inst. §§ 136, 1345; 1 Bish. Crim. Law, 432; Chit. Bills, 182 (158.)

We do not think that any of these statements are really intended to meet such a case as we have here. On the contrary, it is said in one of the sections of Daniel, referred to (section 136): "For this reason bills and notes payable to fictitious payees are not tolerated, and will never be enforced, save when in the hands of a *bona fide* holder, who received them without knowledge of their true character." At section 138 Daniel expressly states his view that an innocent holder is entitled to enforce the paper although a fictitious indorsement may intervene. In Chitty on Bills (pages 181, [158]), the language is used immediately preceding that relied upon by counsel: "Where a bill is drawn in the name of a fictitious person, payable to the order of the drawer, the acceptor is considered as undertaking to pay to the order of the person who signed as drawer; and therefore a *bona fide* indorsee may bring evidence that the signatures of the supposed drawer to the bill and to the first indorsement are in the same handwriting." An examination of the cases cited in support of the texts where these statements are made will show that none of them are of the same character as this. In the main they are cases where the paper was the creation of the party assuming the fictitious name, and was then by him indorsed to others, where quite a different rule might well govern from this, in which the paper set afloat is the creation of another, by whom it was intended to accomplish the very results which it did produce: that is, to pay so much money to the man to whom the check was delivered. It may also be noticed that the cases supporting these text-book citations are mostly old English cases, found in Russell & Ryan's English Crown Cases, and Leach's English Crown Cases, and they do not seem to be followed, to the extent of counsel's application, at least, by even the English courts. In Queen v. Martin, Cockburn, C. J., quotes with approval from Dunn's Case, 1 Leach, 58: "That, if a person give a note entirely as his own, subscribing it by a fictitious name will not make it a forgery; the credit there being given to himself, without any regard to the name, or without any relation to a third person." 21 Alb. Law J. 91. In Com. v. Baldwin, 11 Gray, 197, it is held that signing a promissory note in the name of a fictitious firm, of which the writer claimed to be a member, was not forgery.

ATTORNEY—DISBARMENT—ADVERTISING FOR DIVORCES.—The Supreme Court of Colorado, in People v. MacCabe, 32 Pac. Rep. 280, hold that an advertisement reading "Divorces legally obtained very quietly; good everywhere. Box 2344, Denver," is against good morals, is a false representation and a libel on courts of justice; and repeated publication in a newspaper of such advertisement by an attorney constitutes malconduct in his office, for which the supreme court is empowered by statute to strike his name from the roll of attorneys. Elliott, J., says:

The ethics of the legal profession forbid that an attorney should advertise his talents or his skill, as a shop-keeper advertises his wares. An attorney may properly accept a retainer for the prosecution or defense of an action for divorce, when convinced that his client has a good cause; but for any one to invite or encourage such litigation is most reprehensible. The marriage relation is too sacred, it affects too deeply the happiness of the family, it concerns too intimately the welfare of society, it lies too near the foundation of all good government, to be broken up or disturbed for slight or transient causes. In the present case we are not called upon to deal with a matter of ordinary advertisement, but with a peculiar kind of advertising. Respondent did not advertise for business openly, giving his name and office address. His advertisement was anonymous, and well calculated to encourage people to make application for divorces who might otherwise have refrained from so doing. When a lawyer advertises that divorces can be legally obtained very quietly, and that such divorces will be good everywhere, such advertisement is a strong inducement, a powerful temptation, to many persons to apply for divorces who would otherwise be deterred from taking such a step from a wholesome fear of public opinion. The advertisement published by respondent says, in effect: "If you are dissatisfied with your partner in life,—if you desire a divorce,—communicate with me, and your desire shall be gratified. No one will know it. You see I advertise anonymously. I do not even subject myself to criticism. Everything will be done quietly, and you will be able to sever the disagreeable marriage tie without public scandal, and hence without reproach." The fear of public opinion is not the highest motive, but it exercises a wholesome influence in many ways. It is undoubtedly potent in preventing many suits for divorce; and in most of such cases, not only the individuals directly concerned, but the circle of society in which they move as well as society at large, are greatly benefited by the restraining influence of public opinion. The advertisement published by respondent to the effect that divorces could be legally obtained very quietly, which would be good everywhere, was the more mischievous because anonymous. Such an advertisement is against good morals, public and private. It is a false representation, and a libel upon the courts of justice. Divorces cannot be legally obtained very quietly which shall be good anywhere. To say that divorces can be obtained very quietly is equivalent to saying that they can be obtained without publicity. Every lawyer knows that to obtain a legal divorce a public record must be made of the proceeding; the complaint must be filed; the summons must issue, process must be served upon the defendant, either personally or by publication in a public newspaper, proof must also be taken; and a decree must be publicly rendered by the court having

jurisdiction of the proceeding. All these public proceedings the statute imperatively requires, and for a lawyer, by an advertisement, to indicate that such public proceedings can or will be dispensed with by the courts having jurisdiction of such cases, is a libel upon the integrity of the judiciary, that cannot be overlooked when brought to our notice. In the case of People v. Brown, 17 Colo.—, 30 Pac. Rep. 338, this court said: "When this court grants a license to a person to practice law, the public, and every individual coming in contact with the licensee in his professional capacity, have a right to expect that he will demean himself with scrupulous propriety, as one commissioned to a high and honorable office. A person enjoying the rights and privileges of an attorney and counselor at law must also respect the duties and obligations of the position." The case of People v. Goodrich, 79 Ill. 148, was a disbarment proceeding under statutes from which ours were undoubtedly borrowed. Among other things the complaint against Goodrich set forth that he had published advertisements without signature, representing that he could procure divorces without publicity, and by such advertisements solicited business of that character by communication through a particular post-office box. The Goodrich Case, though similar to the one before us, was more aggravated in some respects. Mr. Justice Breese, in delivering the opinion of the court, said: "This court, having power, by express law, to grant a license to practice law, has an inherent right to see that the license is not abused or perverted to a use not contemplated in the grant. In granting the license it was on the implied understanding that the party receiving it should, at all times, demean himself in a proper manner; and if not reflecting honor upon the court appointing him, by his professional conduct, he would at least abstain from such practices as could not fail to bring discredit upon himself and the courts. * * * The morale of defendant's professional conduct deserves special notice. He makes divorce cases a specialty. How many persons in our broad land weary of the chains that binds them? How many are eager to seize upon the slightest twig that may appear to aid them in escaping from a supposed sea of troubles, in which wedded life has immersed them? How many are fretting under imaginary ills, and what better devices than those practiced by this defendant could be contrived to increase these disquietudes, and stimulate to effort, by perjury, if need be, to free themselves from their supposed unhappy condition? Is it desirable that divorce cases should accumulate in our courts? If so, the defendant is justified in the means he has used and is using to that end. An honorable, high-tone lawyer will always aid a deserving party seeking a divorce, as coming strictly within his professional duties. He will render the aid, not solicit the case; and he will, in all things regarding it, act the man, and respect, not only his own professional reputation, but the character of the courts, and discharge the unpleasant duty in all respects as an honorable attorney and counselor should do."

GIFT OF BANK DEPOSIT—DONATIO MORTIS CAUSA.

1. Definition of Gift Mortis Causa.
2. Delivery, Necessity for.
3. Delivery of Bank Book.
4. Delivery of Draft or Bill of Exchange.
5. Delivery of Promissory Note.
6. Delivery of Check.
7. Delivery to Third Person.

1. *Definition of Gift Mortis Causa.*—A gift or donation *mortis causa* where one delivers property to another conditionally, the title to pass and the gift to become absolute only in the event of the death of the donor from his present sickness,[1] or from the present peril threatening his life.[2] A gift made during the last sickness, from which the donor did not expect to recover, is said in the case of Merchant v. Merchant,[3] to be a donation *causa mortis*, and not a *donatio inter vivos*. It is said by the Supreme Judicial Court of Maine, however, in the case of Dunbar v. Dunbar,[4] that where a gift of personal property is made to take effect immediately and irrevocably, and is fully executed by complete and unconditional delivery, it is binding upon the donor as a gift *inter vivos*, even if the donor at the time is *in extremis* and dies soon after.

2. *Delivery, Necessity For.*—To render valid a gift made *mortis causa* there must be either a delivery of possession outright, or of the means of obtaining possession.[5] Thus it is said in the case of Drew v. Hagerty,[6] that the gift of a savings bank book from

[1] See Knott v. Hogan, 4 Metc. (Ky.) 99; Dole v. Lincoln, 21 Me. 422; Grattan v. Appleton, 3 Story C. C. 755; Ridden v. Thrall, 125 N. Y. 572, 26 N. E. Rep. 626, 32 N. Y. St. Rep. 913, 11 L. R. A. 684, aff'g 55 Hun (N. Y.), 185, 24 Abb. N. Cas. (N. Y.) 52, 27 N. Y. St. Rep. 729, 7 N. Y. Supp. 822; Smith v. Ferguson, 90 Ind. 229, 46 Am. Rep. 216; Roboson v. Jones, 3 Del. Ch. 51; Dickeshied v. Exchange Bank, 28 W. Va. 340; Parcher v. Saco & Biddford Savings Inst., 78 Me. 470; Dexheimer v. Gautier, 5 Rob. (N. Y.) 216; Candor's App., 27 Pa. St. 119; Weston v. Hight, 5 Shep. (Me.) 287; Carr v. Silloway, 111 Mass. 24; Grousey v. Linsenbigler, 51 Pa. St. 342; Irish v. Nutting, 47 Barb. (N. Y.) 370.

[2] See Dickeschied v. Exchange Bank, 28 W. Va. 340; Parcher v. Saco & Biddford Savings Inst., 78 Me. 470; Gass v. Simpson, 4 Cold. (Tenn.) 288; Baker v. Williams, 35 Ind. 547.

[3] 2 Bradf. (N. Y.) 432.

[4] 80 Me. 152, 13 Atl. Rep. 578; to the same effect, Hinschel v. Maurer, 69 Wis. 567, 34 N. W. Rep. 926.

[5] Harris v. Clark, 3 Comst. (N. Y.) 92; and see Drew v. Hagerty, 81 Me. 231, 17 Atl. Rep. 63, 3 L. R. A. 230. In Pierce v. Boston Five Cent Savings Bank, 129 Mass. 425, 37 Am. Rep. 371, in view of death A delivered to B a sealed package containing a sum of money and savings bank books, and a writing signed by him, stating where he wished to be buried, and directing that the balance, after the payment of bills and expenses, should be divided among specified persons, at the same time telling B of the contents and generally of the directions. The court held that it was a valid gift *causa mortis* in trust.

[6] 81 Me. 231, 17 Atl. Rep. 63, 3 L. R. A. 230.

a husband to his wife *causa mortis* is not valid without delivery, although the book is already in her possession; that his saying to her "you may have it," or "you may keep it, it is yours", is not sufficient to pass the property.

3. *Delivery of Bank Book.*—The question whether the delivery of a savings bank book, *causa mortis*, carries the bank deposit with it is one on which the decisions are not harmonious, some courts holding that it does not,[7] while others maintain that it does where those circumstances exist which must surround a gift of that description,[8] even without a written assignment.[9] Thus, in the case of Tillinghast v. Wheaton,[10] the delivery of a savings bank pass-book, containing the entries by the bank officers of money deposited by the deceased wife, with a parol gift by the surving husband when *in extremis*, was held to be a valid *donatio causa mortis* of the money.

4. *Delivery of Draft or Bill of Exchange.*—The delivery to the donee of a draft drawn by the donor upon a third person, who is in possession of his funds, does not operate as an assignment of the sum therein mentioned until the draft has been accepted, and, therefore, does not constitute a valid *donatio causa mortis*.[11] And a voluntary bill of exchange, without consideration cannot be the subject of a valid gift by the maker, as a *donatio causa mortis*, because, to render such gift valid, there must be either a delivery of possession or the means of obtaining possesion; the gift of the maker's own bill of exchange is the delivery of a promise merely, and not of the thing promised.[12]

5. *Delivery of Promissory Note.* — The donor's own promissory note, payable to the donee, cannot be the subject of a valid *donatio causa mortis*,[13] because, to render such a gift valid, there must be either a delivery of the thing given or of the means of obtaining it, and the delivery of the maker's own note is the delivery of the donor's promise only.[14] Consequently a promissory note, made by a party in his last sickness, and in prospect of approaching death, and delivered to the payee, to take effect after his decease, is not valid as a *donatio causa mortis*.[15] The Supreme Court of New Hampshire held in a recent case that a promissory note, made by a father in view of his near approach of death to his son, and placed in the hands of a third person with directions to keep it in his possession until six months after the death of the maker, and then deliver it to the payee, is not good either as a *donatio causa mortis* or as a bequest.[16] And the gift of the maker's own promissory note, based upon the consideration of natural love and affection for the payee, will not create a valid obligation against the maker, or his representatives, either at law or in equity.[17] Thus, where A, in his last sickness, made and delivered to his daughter his note, expressed to be for love and affection, and promising that she should have out of his estate $1,400, to be paid after his decease, in a suit against the administrator to recover the amount of such note, it was held that the note was void for want of a legal and sufficient consideration, and that it could not be sustained as a *donatio causa mortis*.[18]

[7] Ashbrook v. Ryan, 2 Bush (Ky.), 228. See Conser v. Snowden, 54 Md. 175, 38 Am. Rep. 368. In the case of Conser v. Snowden, *supra*, S, being very ill, gave C a written order on a savings bank for the payment to C of a deposit standing in the bank in the name of S. A memorandum was subjoined, that "the book must be sent with this order." The book being in the possession of G, S at the same time gave C a written order for it. C presented the order for the money to the bank, without the book, and the bank refused to pay it without the production of the book. S died some months after at a different place. In an action by C against the administrator of S for the deposit, it not appearing that C ever had the book or ever tried to get it, the court held there could be no recovery.

[8] Walsh v. Bowery Savings Bank, 28 N. Y. St. Rep. 402. See Pierce v. Boston Five Cent Savings Bank, 129 Mass. 425, 37 Am. Rep. 371; Tillinghast v. Wheaton, 8 R. I. 536.

[9] Pierce v. Boston Five Cent Savings Bank, 129 Mass. 425, 37 Am Rep. 371.

[10] 8 R. I. 536

[11] Harris v. Clark, 3 Comst. (N. Y.) 93. Where the the drawer delivered such draft as a gift, and it was not accepted and paid by the drawees, it was held that the payee could not recover the amount from the executors of the drawer. Harris v. Clark, 2 Barb. (N. Y.)

[12] Harris v. Clark, 3 Comst. (N. Y.) 93, overruling Wright v. Wright, 1 Cow. (N Y.) 598.

[13] Parish v. Stone, 14 Pick. (Mass.) 198; Craig v. Craig, 3 Barb. Ch. (N. Y.) 76, and Harris v. Clark, 3 Com. (N. Y.) 93, overruling Wright v. Wright, 1 Cow. (N. Y.) 598; Brown v. Moore, 3 Head (Tenn.), 671; Smith v. Kittridge, 21 Vt. 238.

[14] Harris v. Clarke, 3 Comst. (N. Y.) 93.

[15] Raymond v. Sellick, 10 Conn. 480; Flint v. Pattee, 33 N. H. 520.

[16] Sanborn v. Sanborn, 65 N. H. 263, 18 Atl. Rep. 233. See Parish v. Stone, 31 Mass. (14 Pick.), 198; Flint v. Pattee, 33 N. H. 520; Copp v. Sawyer, 5 N. H. 386.

[17] Smith v. Kittridge, 21 Vt. 21 Vt. 238; Holley v. Adams, 16 Vt. 206.

[18] Holley v. Adams, 16 Vt. 206.

6. *Delivery of Check.*—It is well settled that a mere contract-liability or obligation of the donor is not the proper subject of a *donatio causa mortis*,[19] and without acceptance, or some special undertaking on its part, a bank will not be liable to a payee for the amount of a check so given.[20] The delivery of a check on a bank is not a sufficient delivery to constitute a gift *causa mortis*.[21] Thus, where a check payable to bearer was given by the donor during his last illness to his nephew, accompanied by terms of present and absolute gift, the court held that it was not a valid *donatio mortis causa*.[22] In the case of Kurtz v. Smither,[23] however, it was held that a special deposit in the bank may be the subject of a valid gift *causa mortis*, by giving a check for the amount without a delivery of the negotiable certificate of deposit to the donee; but this was the decision of an inferior court of New York, and it is confidently believed that the doctrine would not be sustained either in the supreme court or the court of appeals of that State. In the case of Beals v. Crowley[24] A, just before her death, gave to B a check and an assignment of a bank account, with directions as to the disposition of a part of the amount. These directions were carried out by B; and the court held that the payments made by B in pursuance of the directions constituted valid gifts, and that, as to the balance remaining in B's hands, it belonged to A's administrator. In Boutts v. Ellis[25] a testator, four days before her death, said to his wife: "I'm a dying man; you will want money before my affairs are wound up," and on the following day gave her a crossed check; on the next day but one, remembering that the cheek was crossed, he asked a friend who visited him to take it and give the wife another for it, which the friend did, but his check was post-dated. The testator's check was paid to his friend before the testator's death, and the friend, after that event, gave to the widow a check not post-dated for the other he had given her. It was held that the transaction constituted a good *donatio mortis causa*.

7. *Delivery to Third Person.*—Where one delivers to another checks on a bank, requesting him to deliver them to the parties in whose favor they are drawn in case of the maker's death, otherwise to return them, there is not a good delivery as a *donatio causa mortis*.[26] But in the case of Beals v. Crowley,[27] where, just before her death, A gave B a check and an assignment of a bank account, with directions as to the disposition of a part of the amount, which directions B carried out, the court held that the payments made by B in pursuance of the directions constituted valid gifts, and that the balance remaining in B's hands belonged to A's administrator. It is said by the Supreme Court of New Hampshire, in the case of Sanborn v. Sanborn,[28] that a promissory note, made by a father in view of the near approach of death to his son, and placed in the hands of a third person, with directions to keep it in his possession until six months after the death of the maker, and then deliver it to the payee, is not a good *donatio mortis causa*.

The Supreme Court of Pennsylvania have held in a recent case, that where a depositor, during her last illness, delivers her savings bank book to a third person, saying that if she died the money was for her sister in Ireland, that it is not a complete *donatio mortis causa*.[29] But where a certificate of deposit is delivered by a person for the use of a third, it is a valid gift *causa mortis*, and the title passes from the death of the donor, although the certificate, payable to the latter's order, has not been indorsed by him.[30] In order to render a gift *causa mortis*, in trust, valid, the the persons who are to take, and also their respective proportions, must be clearly designated.[31]

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[19] See authorities cited, *supra*, under "Delivery of Promissory Note."
[20] Second Nat. Bank v. Williams, 13 Mich. 282.
[21] McKenzie v. Downing, 25 Ga. 669; *Re* Smither, 30 Hun (N. Y.), 632.
[22] Rhodes v. Childs, 64 Pa. St. 18.
[23] 1 Dem. (N. Y.) 499.
[24] 59 Cal. 665.
[25] 4 De G. M. & G. 249, 17 Jur. 585, 31 Eng. L. & Eq. 174.
[26] Walter v. Ford, 74 Mo. 195, 41 Am. Rep. 312.
[27] 59 Cal. 665.
[28] 62 N. H. 20, 18 Atl. Rep. 233.
[29] Walsh's Appeal, 122 Pa. St. 177, 15 Atl. Rep. 470, 22 W. N. C. 258, 19 Pitts. L. J. (N. S.) 213, 1 L. R. A. 532.
[30] Connor v. Boot, 11 Colo. 183, 17 Pac. Rep. 773.
[31] Sheedy v. Roach, 124 Mass. 472.

FOREIGN CORPORATION—TAXATION.

BOSTON INVESTMENT CO. V. CITY OF BOSTON.

Supreme Judicial Court of Massachusetts, March 7th, 1893,

The domicile of a corporation is in the State of its origin irrespective of the residence of its officers or the place where its business is transacted. A foreign corporation therefore is not taxable as an "inhabitant" within the provision of the Massachusetts statute that personal property shall be assessed to the owner within the city or town where he is an inhabitant.

KNOWLTON, J.: These three cases all present the same questions. Each of the plaintiffs is a corporation organized under the laws of another State, having an office and doing a large part of its business in Boston, in this commonwealth. Each of them has paid to the defendant, under protest, a tax issued on money deposited by it with a national bank in Boston, and the question is whether the defendant could legally assess such a tax. The defendant, in its argument, relies solely on Pub. St. ch. 11 § 20, which provides that "all personal estate within or without the commonwealth shall be assessed to the owner in the city or town, where he is an inhabitant on the first day of May, except," etc., and it is contended that the word "owner," like the word "person," may be applied to a corporation, and that a foreign corporation is an inhabitant in any city or town in this State where it has its principal place of business. On the other hand, it may be said that this clause of the statute has never been held to apply to corporations, but has repeatedly been decided to be inapplicable even to corporations organized under the laws of this commonwealth. Previously to the enactment of the laws for taxing franchises of corporations, it was held that the personal property belonging to a corporation, except machinery, was not taxable to the corporation under this section, but was included in the value of the shares which were taxed to the stockholders. Factory Co. v. Danvers, 10 Mass. 514; Worcester Mut. Fire Ins. Co. v. Worcester, 7 Cush. 600; Boston & S. G. Co. v. Boston, 4 Metc. (Mass.) 181; Manufacturing Co. v. Pawtucket, 7. Gray, 277. Of a domestic corporation which does business in different cities and towns it would be impossible to say that it is an inhabitant of one municipality more than of another. There are additional reasons why this section cannot apply to foreign corporations. The language above quoted implies that the owner has a domicile in some city or town of this State, which draws after it for purposes of taxation and the laws of descent all his personal property, wherever situated, and that he is not a person who has a domicile, or who owes allegiance elsewhere. The word "inhabitant" in this statute means one whose domicile is in the place referred to. Borland v. Boston, 132 Mass. 89. The domicile of a corporation is in the State of its origin, and, it retains that domicile irrespective of the residence of its officers or the place where its business is transacted. This has been decided in many cases. Under the judiciary act of the United States, which establishes the jurisdiction of the Circuit Court of the United States, it has always been held that a corporation is a citizen of the State under which it holds its charter, without regard to the residence of its officers or members, or to the place where its business is carried on. Blackstone Manuf'g Co. v. Inhabitants of Blackstone, 13 Gray, 488; Danforth v. Penny, 3 Metc. (Mass.) 564; Railroad Co. v. Leston, 2 How. 497; Marshall v. Railroad Co., 16 How. 314; Insurance Co. v. French; 18 How. 404-408; Railroad Co. v. Harris, 12 Wall. 65; Railroad Co. v. Koontz, 104 U. S. 5-12; Goodlet v. Railroad, 122 U. S. 201, 7 Sup. Ct. Rep. 1254; *Ex parte* Schollenberger, 92 U. S. 369. In Insurance Co. v. Francis, 11 Wall. 210, it is stated that a "corporation of one State, by engaging in business or acquiring property in another State, does not thereby cease to be a citizen of the State creating it. * * * Its place of residence is there, and can be nowhere else. Unlike a natural person, it cannot change its domicile at will; and although it may be permitted to transact business where its charter does not operate, it cannot on that account acquire a residence there." In Bank v. Earle, 13 Pet. 519-588, is a declaration that "it must dwell in the place of its creation, and cannot migrate to another sovereignty." In Merrick v. Van Santvoord, 34 N. Y. 208-218. are these words: "A corporation is an artificial being, and has no dwelling either in its office, warehouse, its depots, or its shops. Its domicile is the legal jurisdiction of its origin, irrespective of the residence of its officers or the place where its business is transacted." It is clear that neither of the plaintiffs is an inhabitant of Boston within the meaning of the word in the section of the statute which we have quoted. In coming into this commonwealth to do business, foreign corporations impliedly agree to subject themselves to the conditions imposed by our statutes, and if the legislature should see fit to tax their money on deposit in banks in this commonwealth the tax would be legal. Oliver v. Insurance Co., 100 Mass. 531; Attorney General v. Bay State Min. Co., 99 Mass. 148. But at present we have no law under which such deposits can be taxed. It is not contended, and it could not successfully be contended, that money in bank is "goods, wares, or merchandise," or "stock in trade," within the meaning of the first clause of section 20, ch. 11, Pub. St. The entry in each case will be, judgment for the plaintiff.

NOTE.—The taxation of foreign corporations presents many interesting phases only one of which is illustrated by the principal case. Such taxes may well be classified as privilege taxes, and taxes upon property. The first are imposed upon the foreign company as a license fee exacted for the privilege of doing business within the jurisdiction. Murfree on Foreign Corporations, § 143 *et seq.* (in press). The

others which alone we propose to consider, are levied upon the property of the foreign company; and, since the power of taxation is territorially limited to the jurisdiction of the sovereign, must necessarily be confined to property which has a *situs* within the State. State Tax on Foreign-Held Bonds, 15 Wall. 319; Maltby v. Reading, etc. Co., 52 Pa. St. 140; McCulloch v. Maryland, 4 Wheat. 316; Commonwealth v. Standard Oil Co., 101 Pa. St. 119; State v. Haight, 30 N. J. L. 428; Marye v. Baltimore, etc. R. Co., 127 U. S. 117. As to real estate, of course there can be no difficulty. Its *situs* is fixed by its very nature. Pipe Line Co. v. Berry, 53 N. J. L. 212, 19 Atl. Rep. 665. Nor can there be much practical difficulty about tangible personal property. Of course it must appear that the property was actually within the jurisdiction. For instance, it has been held that steam ferry boats plying between the City of St. Louis, where they were registered and had their home port, and the shores of the State of Illinois, and which were owned and run by an Illinois corporation, could not be subject to taxation in St. Louis. St. Louis v. Ferry Co., 11 Wall. 423. Compare St. Louis v. Ferry Co., 40 Mo. 580. What is the legal *situs* of the rolling stock of a railroad corporation; and whether it is to be considered real estate, personalty or in the nature of "movable fixtures" are questions which have been much discussed. See Pacific R. Co. v. Cass County, 53 Mo. 17; Orange, etc. R. Co. v. Alexandria, 17 Gratt. 176. It is sufficient here to say that there can be no doubt, on principle or authority, of the right of the State to tax the rolling stock of a foreign railroad corporation which is habitually used within its jurisdiction. It may levy upon such cars and engines a tax which, as the property so used and employed is continuously changing, is to be fixed by an appraisement and valuation of the average amount of property so habitually used. Marye v. Baltimore, etc. R. Co., 127; U. S. 117; Atlantic, etc. R. Co. v. Lesueur (Ariz. Sept. 18, 1891), 19 Pac. Rep. 157. See, also, Baltimore, etc. R. Co. v. Allen, 22 Fed. Rep. 376. The question as to the *situs* of intangible personal property presents more difficulty. It has been held that the mere right of a foreign creditor to receive payment of his demand cannot be subjected to taxation within the State. It is a right that is personal to the creditor where he resides and the residence or place of business of his debtor is immaterial. Cooley, Taxation, 21; Barber Asph. P. Co. v. New Orleans, 41 La. Ann. 1016, 6 South. Rep. 794. The capital stock of a corporation is susceptible of taxation in two aspects; it may be assessed directly to the company as capital stock, or the shares may be assessed as the individual property of the shareholders. The capital stock of a foreign corporation can only be assessed for taxation, as far as it is subject to the local jurisdiction by being employed within the State. People v. Am. Bell Tel. Co., 117 N. Y. 241, 22 N. E. Rep. 1057. But the shares of stock fall within the general rule that the *situs* of personal property follows the domicile of the owner, and, although the company is organized and located in another jurisdiction, they may be taxed for State and county purposes, if the owner resides within the jurisdiction (McKeen v. Northampton County, 49 Pa. St. 519, Whitesell v. Northampton County, 49 Pa. St. 526; State v. Branin, 23 N. J. L. 484; State v. Bently, 23 N. J. L. 532; Seward v. Rising Sun, 79 Ind. 351; Great Barrington v. County Commissioners, 16 Pick. 572; Newark City Bank v. Assessor, 30 N. J. L. 13), notwithstanding a tax has already been paid thereon in the State where the corporation is located. Seward v. Rising Sun, 79 Ind 351; Dyer v. Osborne, 11 R. I. 321; San Francisco v. Fry, 63 Cal. 470, 1 Am. & Eng. Corp. Cas. 431. In this last case it was held that a constitutional inhibition against double taxation applied only to taxation by the same State or government. In the case of a domestic corporation shares of stock belonging to a non-resident stockholder follow his domicile and in comtemplation of law, are beyond the local jurisdiction, and therefore are not subject to taxation, although the tax may be levied on the capital stock as a whole, as the property of the company. North Carolina R. Co. v. Comrs. of Alamance, 91 N. C. 454. Sometimes the statutes recognize the inequity of such double taxation and provide for the exemption of shares in a foreign corporation, where its stock is taxed in the State of its corporate domicile. Smith v. Town of Exeter, 37 N. H. 556; Foster v. Stevens, 63 Vt. 175, 22 Atl. Rep. 78. See also British Foreign M. Ins. Co. v. Board of Assessors, 42 Fed. Rep. 90. A provision, however, of the Ohio statute (Act Ohio April 3, 1859, § 59), that "no person shall be required to list for taxation any certificate of the capital stock of any company, the capital stock of which is taxed in the name of the company," has been held by the Supreme Court of the United States not to be applicable to shares in a foreign corporation which pays taxes in Ohio only on that portion of its property which is situated there. Sturges v. Carter, 114 U. S. 511.

WM. L. MURFREE, JR.

BOOKS RECEIVED.

Death by Wrongful Act. A Treatise on the Law Peculiar to Actions for Injuries Resulting in Death, Including the Text of the Statutes and an Analytical Table of their Provisions by Francis B. Tiffany, St. Paul Minn.: West Publisihng Co. 1893.

A Treatise on the Law of Tax Titles, their Creation, Incidents, Evidence, and Legal Criteria. By Henry Campbell Black, M. A., Author of "Blacks Law Dictionary," and of Treatises on "Judgments," "Intoxicating Liquors," Constitutional Prohibitions," etc. Second Edition, Revised and Enlarged. St. Paul, Minn.: West Publishing Co. 1893.

THE AMERICAN STATE REPORTS, Containing the Cases of General Value and Authority subsequent to those contained in the "American Decisions" and the "American Reports," decided in the Courts of Last Resort in the Several States. Selected, Reported and Annotated by A. C. Freeman and the Associate Editors of the "American Decisions." Vol. XXIX. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers. 1893.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATOR—Assets.—Where a person deposits money as her own with one who afterwards takes out letters of administration on the estate of her deceased husband, and sets up a claim to the money deposited as belonging to such estate, the contract of bailment is not thereby destroyed, and the burden is on the administrator to prove that the claim of his intestate was superior to that of the bailor.—JACKSON V. JACKSON, Ala., 12 South. Rep. 437.

2. ADMINISTRATION—Probate Court—Jurisdiction.—Code, § 1672, providing that an administrator deriving his appointment from a court of probate of this State may transfer the shares of stock held by the intestate in any private corporation, does not conflict with the remaining portion of the same section, giving the same power to a foreign administrator, since the latter provision applies only when there is no administration in this State.—WINTER V. LONDON, Ala., 12 South. Rep. 438.

3. ATTACHMENT BY PARTNER AGAINST FIRM.—A partner cannot maintain an attachment against the firm of which he is a member. A complaint alleged that plaintiff and defendant were partners; that defendant maliciously sued out an attachment against the firm, and levied on the partnership stock, closing the firm's storehouse, and thereafter the constable, by direction of defendant, without plaintiff's consent, and without lawful authority, ousted plaintiff from his business; and that the matters alleged in the affidavit to procure the attachment were maliciously false, and made for the purpose of injuring plaintiff: Held, that the complaint stated a good cause of action, and it was not necessary to set out the grounds of the attachment, or the nature of the debt.—NEWMAN V. PITMAN, Ala., 12 South. Rep. 412.

4. ATTORNEY—Grounds for Disbarment.—It is sufficient ground for the disbarment of an attotney that he procured a judgment on a note with the knowledge that it was given to perpetrate a fraud on the maker of the note or on his creditors, and that the attorney procured the judgment to assist another in carrying out such fraud.—PEOPLE V. KEEGAN, Colo., 32 Pac. Rep. 424.

5. BANKS—Stockholders.—All but three stockholders of an insolvent bank agreed to transfer to certain persons all the stock, in consideration that the latter would provide $100,000 for resuming business by the bank under a new organization, by the issuance of new stock under its charter, and pay its creditors 74 per cent. of the amounts due then in full settlement: Held, that the execution of such agreement by the parties to it did not affect the rights of stockholders not consenting thereto.—GRESHAM V. ISLAND CITY SAV. BANK, Tex., 21 S. W. Rep. 556.

6. BANKS—Payment—Agent.—The local cashier of the plaintiff railroad company, who only had authority to indorse the checks given for freight charges for collection and deposit in bank, indorsed a number of checks given by defendant simply, "J, Agent. By S, Cashier," —and deposited them, and they were paid through the clearing house by the bank on which they were drawn. The latter bank had no notice of the limited authority of the cashier, and afterwards paid him the money on one of defendant's checks, given in payment of a freight bill, and similarly indorsed.—KANSAS CITY, M. & B. R. R. CO. V. IVY LEAF COAL CO., Ala., 12 South. Rep. 395.

7. BOND—Erection of Public Building.—Under Code Proc. § 800, providing that "no bond required by law, and intended as such bond, shall be void for want of form of substance, recital or condition, or shall the principal or surety on such an account be discharged:" Held, that a contractor's bond given to the directors of a school district under Laws 1887—88, p. 15, providing that when public buildings are erected the contractors shall give bonds, is not void because the State of Washington is not named therein as obligee, or because the statutory form is not followed.—IHRIG V. SCOTT, Wash., 32 Pac. Rep. 467.

8. CARRIERS—Passenger—Assault by Employee.—It is the lawful right of every citizen *prima facie* to become a passenger on a railway train, and neither the purchase of a ticket nor the entry into the car is essential to create the relation of carrier and passenger, and where a person enters the ticket office of a railway company to buy a ticket he is entitled to the protection of a passenger, even though the agent refused to sell him a ticket.—NORFOLK & W. R. CO. V. GALLIGHER, Va., 16 S. E. Rep. 936.

9. CARRIERS—Passenger—Damages.—Where a person is wrongfully ejected from a train, she is entitled to recover for humiliation and mental suffering caused thereby, though the ejection was unaccompanied by violence, insult, or indignities, and though the conductor believed that she had no right to ride on such train, and acted in good faith in ejecting her.—WILLSON V. NORTHERN PAC. R. CO., Wash., 32 Pac. Rep. 468.

10. CARRIERS — Lien for Freight. — A contract by a railroad company to transport for an agreed sum, paid it in advance, chattels over its line, to a point on the line of another railroad company, with which it has no traffic agreement, does not bind the latter company, where it has no notice of the terms of such agreement; and it has a lien on such chattels for its own freight charges, and for freight charges advanced by it to a railroad company which transported the chattels from the line of the receiving company to its own.—MOSES V. PORT TOWNSEND S. R. CO., Wash., 32 Pac. Rep. 488.

11. CARRIERS — Passenger — Negligence — Proximate Cause.—Where a person who has been riding on the platform of a railroad car, in violation of the company's rule, is injured by the backing of the car after he has gotten off, there is no causal connection between his violation of such rule and the injury suffered as will preclude him from bringing an action against the railroad company for negligence. — GADSDEN & A. U. RY. CO. V. CAUSLER, Ala., 12 South. Rep. 439.

12. CERTIORARI—When Lies.—As an appeal lies from an order denying a motion to vacate a judgment, *certiorari* does not lie to review such judgment, though the time limited for an appeal therefrom had expired before the motion to vacate was decided. — LEWIS V. GILBERT, Wash., 32 Pac. Rep. 460.

13. CHATTEL MORTGAGE—Possession.—A mortgage of a stock of goods, whereby the mortgagor reserves to himself the right of continuing in possession and to sell the goods, is not void as to creditors where at the time of executing the mortgage he was solvent.—THORNTON V. COOK, Ala., 12 South. Rep. 403.

14. CONFLICT OF LAWS—Statute of Frauds.—Gen. St. 1883, § 1517, provides that every contract for the sale of lands, or an interest therein, "shall be void, unless the contract, or some note or memorandum thereof," is in writing, but does not prohibit the bringing of an action in cases falling within its provisions: Held, in a suit in Colorado on a parol contract made in Idaho, to be performed therein, for the sale of a mining property in Idaho, that the validity of the contract is determinable under the laws of Idaho; and where the contract was valid at common law, and there was no evidence to show its invalidity under the laws of Idaho, there can be no presumption against its validity in Colorado.—WOLF v. BURKE, Colo., 32 Pac. Rep. 427.

15. CONSTITUTIONAL LAW — Imprisonment for Contempt.—St. 1890, ch. 128, giving a district court power to imprison a judgment debtor for contempt in case the debtor, after notice of his examination, makes a payment of money not exempt from execution, with intent to defraud the judgment creditors, is not in conflict with Bill of Rights, art. 12, providing that no person shall be imprisoned but by "the law of the land," in that it authorizes an inferior court to punish criminally without the right of appeal in violation of "the law of the land," as such a provision is merely in aid of proceedings under Pub. St. ch. 162, relative to the collection of judgment debts, and is not a substantive provision for the punishment of crime.—IN RE KERRIGAN, Mass., 33 N. E. Rep. 390.

16. CONTRACT — Construction — Conditions. — Where one executed and delivered an instrument of writing, under seal, to another, and thereby promised to pay to that other, his associates or assigns, on demand, $500 for the purpose of aiding in the construction of a railroad, upon the express condition that said road should be graded and cross-ties laid thereon, ready for the iron, and made ready for the operation of trains, on or before a certain day, recovery cannot be had upon said instrument unless the road was graded, and cross-ties laid thereon, ready for the iron, and made ready for the operation of trains, within the stipulated time.—PERSINGER v. BEVILL, Fla., 12 South. Rep. 363.

17. CONVERSION—Mortgage — Sale by Auctioneer.—Where an auctioneer sells goods under a mortgage by a bailee to a third person, he is liable to the bailors for the goods though he acts in good faith, and in ignorance of the rights of the latter.—ROBINSON v. BIRD, Mass., 33 N. E. Rep. 392.

18. CORPORATION—Action—Venue.—Where a foreign corporation, having its office in a certain county, makes a contract with persons living in another county to loan the money of the corporation on land situate in that county, a cause of action for breach on the part of the corporation must be deemed to have arisen in the latter county, within Rev. St. art. 1198, and the corporation therefore is suable in that county. —EQUITABLE MORTGAGE CO. v. WEDDINGTON, Tex., 21 S. W. Rep. 576.

19. CORPORATIONS — Agent. — Where information is casually obtained by an agent of a corporation, the corporation is not charged with notice, from the mere fact of its agent's knowledge; but if the corporation act through such agent, in a matter where the information possessed by him is pertinent, the knowledge of the agent will be imputed to the principal.—WILLARD v. DENISE, N. J., 26 Atl. Rep. 29.

20. CORPORATIONS—Dividends—Stockholder.—Where a corporation declares a dividend on all its stock except the shares named in a certain certificate, the owner of such certificate may sue the corporation for the dividend on his shares, since such an exception is void.—HILL v. ATOKA COAL & MIN. CO., Mo., 21 S. W. Rep. 508.

21. CORPORATIONS — Forged Certificate of Stock.—Where the secretary and treasurer of a corporation, who is also its agent for the transfer of stock, and authorized to countersign and issue stock when signed by the president, forges the name of the latter, and fraudulently issues a certificate of stock, the corporation is liable to a bank which has accepted such certificate, in good faith, as security for a loan.—FIFTH AVE. BANK OF NEW YORK v. FORTY-SECOND ST. & GRAND ST. FERRY R. CO., N. Y., 33 N. E. Rep. 378.

22. CORPORATIONS—Injunction—Use of Name.—Where a committee appointed by the members of a voluntary association to procure a charter of incorporation obtain such charter, and organize thereunder, calling the corporation by the name of the voluntary association, the members of the association cannot enjoin such corporators from acting under the charter, in that, having been granted by the legislature, it can only be forfeited or revoked by the legislature, or at the suit of the State.—PAULINO v. PORTUGUESE BEN. ASS'N, R. I., 26 Atl. Rep. 36.

23. CORPORATIONS — Organization by one Person.—Where a corporation, while its stock is owned by one person, and while doing a prosperous business, becomes an accomodation indorsor of the drafts of third persons, with the belief by such sole stockholder and by the bank cashing the drafts that only the corporation is made liable thereon, and such bank has obtained judgment against the corporation on such drafts, such sole stockholder is not personally liable and such bank is not entitled to share in the distribution of the assets of his estate in the hands of an assignee.—LOUISVILLE BANKING CO. v. EISENMAN, Ky., 21 S. W. Rep. 531.

24. CORPORATION—Subscription to Corporate Stock. —Where two or more persons form a private corporation, with a capital stock of $1,000,000, and pay for their stock by transferring to the corporation for the possibility of obtaining a patent, the facts do not show a compliance with Code 1876, §§ 1803-1807, as amended by Acts 1882-83, p. 5, 40, providing that the subscriptions to the stock of private corporations shall be made payable in money, labor, or property, or with Const. art. 14, § 6, providing that no corporation shall issue stock except for money, labor, or property actually received. —SANCHE v. WEBB, Ala., 12 Pac. Rep. 377.

25. COURTS—Clerk—Judgments and Liens.—It is no part of the official duty of a clerk of the district court to make searches of the records in his office for judgments, liens, or suits pending, affecting the title to real property, and certify to the result of such search. —MALLORY v. FERGUSON, Kan., 32 Pac. Rep. 410.

26. CRIMINAL EVIDENCE — Murder. — On a trial for murder, evidence that deceased "was a man of quarrelsome nature, and was feared in the neighborhood as a dangerous character, and had on several occasions threatened to shoot and kill people," is properly excluded, where it is not shown that defendant had knowledge of those facts. — COMMONWEALTH v. STRAESSER, Penn., 26 Atl. Rep. 17.

27. CRIMINAL TRIAL—Argument of Counsel.—Defendant's counsel having assailed the credibility of a witness for the State, it was proper argument for the prosecuting attorney to say to the jury that, if she had not spoken truly when she said that she had made a certain statement to another witness, defendant's counsel could have proven this by such witnesses, of whom he had made no inquiry in regard to the matter. —GREEN v. STATE, Ala., 12 South. Rep. 416.

28. CRIMINAL LAW—Appeal by the State.—A writ of error to review a judgment in favor of a defendant in a criminal case does not lie, at the instance of the State, at common law.—PEOPLE v. RAYMOND, Colo., 32 Pac. Rep. 429.

29. CRIMINAL LAW — Assault. — Where the accused was charged with an assault and battery when armed with a deadly weapon, "with intent to kill," and the verdict was for "assault and battery with intent to do bodily harm, as charged in the information," held, the verdict will warrant a conviction for assault and battery only. The weapon with which an assault is committed is an essential feature of the

crime defined by section 6510, *supra*.—STATE v. JOHNSON, N. Dak., N. W. Rep. 547.

30. CRIMINAL LAW—Burglary.—Where a person enters the chimney of a storehouse at the top, intending to go down such chimney into the store to steal, he is guilty of burglary, though he does not in fact get through the chimney into the building where the goods are.—OLDS v. STATE, Ala., 12 South. Rep. 409.

31. CRIMINAL LAW—False Pretenses.—In a prosecution for obtaining money under false pretenses, the gist of the offense consists in obtaining the money of another by false pretenses with the intent to cheat and defraud. The proof tends to show that the accused acted in good faith, and in the reasonable belief that the draft would be paid.—KETCHELL v. STATE, Neb., 54 N. W. Rep. 564.

32. CRIMINAL LAW — Gaming. — Where two or more persons engage in throwing dice for money, and other persons, standing by, bet money upon the result of the "throws," the latter, as well as the former, are guilty of playing and betting, under section 4541 of the Code, although they did not throw the dice, and did nothing but bet upon the throws that the others made. In such case those who handled the dice are, by adoption, the agents of those who do not, and the playing is thus done by the latter through the agency of the former. In misdemeanors all are principals.—PARMER v. STATE, Ga., 16 S. E. Rep. 937.

33. CRIMINAL LAW — Grand Larceny.—Under Comp. Laws, div. 4, ch. 6, § 93, providing that if any bailee of money, goods, or property convert the same to his own use, with intent to steal, he shall be guilty of grand or petit larceny, according to the amount of the property or value of the goods, chattels, or property converted, in the same manner as if the original taking had been felonious, a bailee of a horse, who converts it with intent to steal, cannot be convicted of grand larceny without regard to its value, though section 78 makes the stealing of a horse of any value grand larceny.—STATE v. HAYES, Mont., 32 Pac. Rep. 415.

34. CRIMINAL LAW—Intoxication to Excuse Crime.—Intoxication is no justification or excuse for crime; but evidence of excessive intoxication by which the party is wholly deprived of reason, if the intoxication was not indulged in to commit crime, may be submitted to the jury for it to consider whether in fact a crime has been committed, or to determine the degree where the offense consists of several degrees.—O'GRADY v. STATE, Neb., 54 N. W. 556.

35. CRIMINAL LAW—Manslaughter—Instructions.—An instruction stating, on the trial of two persons for murder, that if defendants, or either of them, had killed deceased, and defendants before or at the time had formed in their minds a premeditated design to take the life of deceased, they should be found guilty, although not beyond criticism, must be held the same as if the statement had been "if defendants together" or "jointly" or "unitedly" had formed the design.—JONES v. STATE, Miss., 12 South. Rep. 444.

36. CRIMINAL LAW — Uttering Forged Instruments.—The mailing of a forged instrument in one county, and the receipt thereof in another county, does not constitute an uttering in the first county, within Crim. Pr. Act, § 32, providing that when a crime has been committed partly in one county, and partly in another county, or the acts or effects constituting or requisite to the consummation of the offense occur in several counties, the jurisdiction is in either. — STATE v. HUDSON, Mont., 32 Pac. Rep. 414.

37. CRIMINAL PRACTICE—Burglary.—Where, in an indictment for burglary, the only description of the house, room, or inclosure broken into is "a sample room in the Arlington Hotel, a building in" a certain city, it is insufficient, since it does not show that such hotel or room was a dwelling house, or that such room was a shop, store, warehouse, or other structure, in which goods, merchandise, or other valuable thing was kept for use, sale or deposit.—THOMAS v. STATE, 12 South. Rep. 409.

38. CRIMINAL PRACTICE—Charging Several Offenses.—An indictment may charge several distinct felonies if of the same general description, and if the mode of trial and the nature of the punishment is the same, and a person may be convicted thereunder of any one or more of the felonies charged.—BENSON v. COMMONWEALTH, Mass., 33 N. E. Rep. 384.

39. CRIMINAL PRACTICE—Homicide — Plea in Abatement.—It is not error on the part of the trial court to overrule a plea in abatement, based solely upon the fact that the warrant of arrest directs the officer serving it to bring the prisoner before the magistrate issuing such warrant, instead of directing that he be taken before "some magistrate of the county."—STATE v. ALDRICK, Kan., 32 Pac. Rep. 408.

40. CRIMINAL PRACTICE—Costs. — Under Mill. & V. Code, § 6453, providing that costs in criminal cases taxable against defendant shall include those incident to the arrest, prosecution, and safe-keeping of defendant and the execution of the judgment or sentence, defendant is liable for the costs of attachments against witnesses, where the witnesses were afterwards found innocent of any contempt.—STATE v. RINEHART, Tenn., 21 S. W. Rep. 524.

41. CUSTOM AND USAGE—Effect. — In an action for mason work, at a specified price per perch, where the dispute is as to the number of perches contained in the work, a uniform, universal, and notorious custom of measurement among masons is binding, though the result of such measurement is greater than the actual contents.— MCCOULLOUGH v. ASHBRIDGE, Pa., 26 Atl. Rep. 10.

42. DEEDS — Construction — Description. — Though mere declarations of parties as to the meaning or application of the descriptive part of a deed may not be admissible to explain ambiguous or doubtful words therein contained, nevertheless collateral facts and circumstances established by parol evidence are often admissible for that purpose.—KRETSCHMER v. HARD, Colo., 32 Pac. Rep. 418.

43. DEED BY INSANE PERSON.—In an action by the guardian of an insane person to set aside a conveyance by his ward on the ground of his alleged insanity at the time he executed the conveyance, there having been no adjudication as to his insanity at the time of such conveyance, an answer stating that the guardian, after his appointment, with full knowledge of the facts and circumstances under which the conveyance was made, ratified it, is demurrable, as stating a conclusion of law, and not facts.—FUNK v. RENTCHLER, Ind., 33 N. E. Rep. 364.

44. DEED—Town Sites. — Where a patent to a town site has issued, a deed from the town authorities, of a town lot, vests in the grantee a title which cannot be afterwards questioned collaterally, if at the time the patent issued no mine had been discovered, and the land was not known to be mineral.— MCCORMICK v. SUTTON, Cal., 32 Pac. Rep. 444.

45. DETINUE—Possession of Defendant.—After a landlord had attached his tenant's furniture for rent, and the sheriff had left it in the hands of the tenant as his special agent and bailee, plaintiff, claiming under a mortgage given by the tenant on the furniture while it was in the landlord's house, brought detinue against the tenant for it, and, the property being seized thereunder, the tenant gave the sheriff a forthcoming bond therefor, and it continued to remain in his possession until sold under judgment in the attachment suit: Held that, as defendant had possession only under a bailment which obliged him to deliver to the sheriff, plaintiff could not recover.—KYLE v. SWEM, Ala., 12 South. Rep. 410.

46. DIVORCE— Jurisdiction— Service.— Where a divorce a *vinculo matrimonii* is sought by one of the parties to a marriage that was celebrated in this State, conformably to our laws, against the other party, who is

an absentee, permanently residing beyond the territorial limits thereof, a court of this State has ample jurisdiction and authority to decide the issue, it involving a civil *status;* and that jurisdiction attracts to it authority to bring such absentee into court by means of substituted service of citation, and subject him to the judgment therein pronounced.—BUTLER v. WASHINGTON, La., 12 South. Rep. 356.

47. EASEMENT—Way by Prescription.—That the use by neighbors of a pass-way over uninclosed woodland is merely a permissive use, which the owner may revoke at any time, is evident from the fact that other pass-ways, running in the same general direction as the one in question, have been changed and stopped from time to time by the owner at his pleasure, without any objection to his right so to do, as he brought the land under cultivation; and the user of the pass-way in question can, therefore, never ripen into a prescriptive right, as the user must be under such circumstances as will indicate that it has been claimed as a right, and has not been regarded by the parties merely as a privilege revocable at the pleasure of the owner of the soil.—CONYERS v. SCOTT, Ky., 21 S. W. Rep. 529.

48. EJECTMENT—Instructions.— In ejectment, where the defendant denies the plaintiff's title, and sets up title in himself by adverse possession, it is error to charge that, unless the jury find for defendant on the question of adverse possession, they should find for plaintiff, since such instruction assumes that plaintiff has good record title.—WILKERSON v. EILERS, Mo., 21 S. W. Rep. 514.

49. EMINENT DOMAIN—Assessment of Damages.—In a proceeding to estimate damages for land condemned for railroad purposes, declarations of the general manager of the company for which the land was to be condemned, as to the purpose for which the land was to be used, are inadmissible; such manager not being an agent of the company for the purpose of making admissions.—WELLINGTON v. BOSTON & M. R. R., Mass., 33 N. E. Rep. 393.

50. EQUITY JURISDISTION—Creditors' Suit.—A court of equity will not take juriscidtion of a suit brought in aid of a judgment at law, where the bill avers that execution has been issued, and levied upon the judgment debtor's property, and does not allege that such execution has been returned.—CLEVELAND ROLLING-MILL CO. v. JOLIET ENTERPRISE CO. U. S. C. C. (Ill.), 53 Fed. Rep. 684.

51. EVIDENCE—Ancient Documents.—A testimonium executed in 1832, by the acting alcalde of a Mexican city to evidence the sale of a Mexican grant, which was subsequently deposited in the archives of the general land office of the State of Texas, where it remained until 1854, when it was withdrawn for use in pending suits, and the authenticity of which has been repeatedly established, is admissible in evidence as an ancient document.—DE LA VEGA v. LEAGTE, Tex., 21 S. W. Rep. 565.

52. EVIDENCE — Books of Account — Cross-examination.—A party, after having testified to the correctness of book entries, which he has examined to refresh his recollection, and to the fact that they were made in the usual course of business, may be cross-examined as to whether some of the entries had not been made since the origin of suit, without making the entries evidence in the cause, and although the book containing them has not been offered in evidence.—LITTLE v. LISCHKOFF, Ala., 12 South. Rep. 429.

53. EVIDENCE—Credibility of Witnesses.—In so far as the evidence of an employee of one of the parties conflicts with that of other witnesses, the jury may look to his employment as a fact which may affect his credibility. A request to charge, covered by the general charge, need not be given. The evidence being that the plaintiff was furnished with a coupling stick, to be used till he learned how to couple without it, and that his injury was received after he had learned to couple without a stick, and had on many occasions done so, some of the instances being in the presence of his superior officers, who made no objection, the court properly denied a request by the defendant to charge the jury that if the plaintiff, in undertaking the service was furnished with a coupling stick, and directed to use it in coupling, but did not use it at the time of the injury, and attempted to make the coupling with his hand instead of the stick, and was hurt in making such attempt, he could not recover. That an engine was defective is not established by the testimony of the plaintiff that the engineer told him some days after the injury that it had certain defects, although the engineer had testified that he did not so tell him. Impeaching the evidence of the engineer by contradicting him as to what he had said would not prove that what he had said was true. Answers to hypothetical questions as to how an engine would act if steam escaped into the cylinders, etc., would not establish the fact that there was a defeat in the engine, without evidence that the particular engine acted in that manner.—CENTRAL RAILROAD & BANKING CO. v. MALTSBY, Ga., 16 S. E. Rep. 953.

54. EVIDENCE—Parol Evidence.—In an action against a corporation to recover money it appeared that plaintiff had been a stockholder in the corporation, and had made advances to it to the amount sued for; that he had transferred his stock and interest in defendant corporation to other stockholders therein by a written instrument which recited that he sold "all right, title, and interest of whatsoever nature in and to all property hitherto and now belonging to" defendant, including all "claims and advances:" Held, that parol evidence was admissible to show to whom the claim for "advances" mentioned in the instrument belonged, and that they were those which formed the basis of the action. — DARBY v. ARROWHEAD HOT SPRINGS HOTEL CO., Cal., 32 Pac. Rep. 454.

55. EXECUTION—Sale —Estoppel. — Where a levy on plaintiffs' land under an execution is void because made after the time allowed by Code 1886, § 3345, for the return of an execution, the fact that plaintiffs permitted the sale thereunder to proceed, and surrendered possession, without objection, will not estop them to deny the validity of such sale.—FRIEDMAN v. WALDROP, Ala., 12 South. Rep. 427.

56. FEDERAL COURTS — Assignment for Benefit of Creditors. — The South Dakota statute relating to assignments for benefit of creditors (Civil Code, § 4660) declares such assignments void if made upon any trust or condition by which any creditor receives a preference, but provides that in such case the property of the insolvent shall become a trust to be administered in equity in the district court, and shall inure to the benefit of all the creditors in proportion to their respective claims: Held, that in the case of foreign creditors the rights given by this statute may be enforced in a federal court.—WYMAN v. MATHEWS, U. S. C. C. (S. Dak.), 53 Fed. Rep. 678.

57. FEDERAL COURTS — Jurisdiction. — Averments showing diverse residence are not equivalent to averments of diverse citizenship, and are insufficient to sustain the jurisdiction of a federal court.—TINSLEY v. HOOT, U. S. C. C. of App., 53 Fed. Rep. 683.

58. FEDERAL COURTS—Writ of Error.—A writ of error from the circuit court of appeals to a circuit court must be dismissed, unless sued out within six months from the entry of the judgment sought to be reviewed, as required by section 11 of the judiciary act of March 3, 1891. Under sections 5 and 6 of the judiciary act of March 3, 1891, the circuit court of appeals has no jurisdiction to review a decision which involves the construction or application of the constitution of the United States, or in which a State law is claimed to be in contravention thereof.—HAMILTON v. BROWN, U. S. C. C. of App., 53 Fed. Rep. 754.

59. FORCIBLE ENTRY AND DETAINER. — Under the amendment (Code 1886, § 3380) making forcible entry and detainer include a peaceable entering upon lands, "and then by unlawful refusal, or by force and threats,

turning or keeping the party out of possession,' where the disseisor enters by force or threats no demand is necessary before bringing the action, but, if the entry is peaceable, there must be a demand of possession and unlawful refusal thereof, or force or threats used in turning or keeping the party out of possession.—KNOWLES v. OGLETREE, Ala., 12 South. Rep. 397.

60. GIFT CAUSA MORTIS — Pass Book. — Two days before his death, defendant's intestate gave plaintiff a key to a box, and directed him to bring a pass book containing an account with a national bank. On the next day, in the presence of witnesses, deceased, after stating that he was going to die, handed to plaintiff the bank book, keys, and papers, saying: "Take this book. I give you this money, and all I have got. Go and get it." Plaintiff took the articles and retained them: Held, not sufficient to constitute a valid gift *causa mortis* of the money on deposit in such bank to the credit of deceased.—JONES v. WEAKLEY, Ala., 12 South. Rep. 429.

61. HIGHWAYS — Obstruction. — Where streets are opened, and traveled by the public, and the city claims control over them, and defendant does not allege or attempt to show any right to obstruct them, evidence of a formal acceptance of the streets by the city is unnecessary.—CITY OF SCRANTON v. SCRANTON STEEL CO., Pa., 26 Atl. Rep. 1.

62. HIGHWAYS—Title to Fee.—Plaintiff acquired title to a lot abutting on a canal which was afterwards filled up, and used as a city street for more than 20 years. One C claimed the fee of the street under deeds from the canal company: Held, that the abutting owners had no title to the fee in the street, which, in case of non-user of the street, would revert to C.—DECKER v. EVANSVILLE SUBURBAN & N. RY. CO., Ind., 33 N. E. Rep. 349.

63. HOMESTEAD—Joint Tenancy.—A homestead may be claimed in lands held in joint tenancy. An undivided interest in real estate, accompanied by the exclusive occupancy of the premises by the owner of such interest, and his family, as a home, is sufficient to support a homestead exemption.—GILES v. MILLER, Neb., 54 N. W. Rep. 551.

64. HOMESTEAD—Liability for Debts.—Rev. St. U. S. § 2296, providing that no lands acquired under the provisions of the homestead act shall be liable for any debt contracted prior to the issuance of the patent therefor, applies though the land ceased to be occupied as a homestead after the issuance of the patent.—JEAN v. DEE, Wash., 32 Pac. Rep. 461.

65. INDEMNITY—Extent of Liability.—The indemnitor of a surety on an administrator's bond is not liable for attorneys' fees incurred by the surety in prosecuting an appeal from a judgment on the bond against such surety, for moneys of the estate unaccounted for by the administrator, unless the indemnitor encouraged a continuation of the defense by appeal, or such appeal was palpably to his advantage. — BRANDT'S EX'R v. DONNELLY, Ky., 21 S. W. Rep. 534.

66. INJUNCTION BOND — Damages. — A person is not entitled to recover from sureties on an injunction bond, as damages sustained by her in dissolving such injunction, the value of services performed by an attorney in procuring such dissolution, where such services were rendered her gratuitously. Under a mortgage empowering the mortgagee, on default, to realize out of the land, in rents or by sale thereof, sufficient to pay the expenses of foreclosure, and the debt and interest, the assignee of the mortgagee is not entitled to damages by reason of an injunction restraining her from collecting the rents on default, unless, on a sale of the land under the mortgage, it failed to satisfy the mortgage, and the rent was necessary thereto. — SCHENING v. COFER, Ala., 12 South. Rep. 414.

67. INJUNCTION BOND—Release of Sureties.—In an action on an undertaking given in a suit of injunction, the fact that one of the principals in the injunction has been discharged as a party defendant will not release the sureties on the undertaking, since, the liability of the principals being several as well as joint, an award of damages against one principal is sufficient to hold the sureties.—SMITH v. ATKINSON, Colo., 32 Pac. Rep. 425.

68. INJUNCTION—Restraining Collection of Taxes.—Injunction will not issue to restrain the collection of taxes, unless in the clearest cases of want of jurisdiction in the assessing and collecting officers.—BLACK v. BOYD, Penn., 26 Atl. Rep. 5.

69. INSURANCE—Additional Insurance.—Plaintiff applied to an insurance, and, on such application, several companies, including defendant, issued policies, and placed the same with the company to which application was made for delivery to plaintiff: Held, that the latter company was agent for defendant and the other companies, and its knowledge of the additional insurance is chargeable to defendant.—MESTERMAN v. HOME MUT. INS. CO. OF CALIFORNIA, Wash., 32 Pac. Rep. 458.

70. INSURANCE.—A statement made by the general agent of a corporation, in the course of his employment, of a fact within his official knowledge touching the *status* of a matter intrusted to him, is admissible in evidence on behalf of the party with whom the corporation was dealing at the time.—AGRICULTURAL INS. CO. OF WATERTOWN v. POTTS, N. J., 26 Atl. Rep. 27.

71. INSURANCE—Proof of Loss.—A clause in an insurance policy requiring formal proofs of loss to be furnished, within 30 days after the fire is waived by the company's appointment of an adjuster after being verbally notified of the loss, who makes a written report of the loss, signed and sworn to by the insured, after the expiration of the 30 days, but as soon as the nature of the business permits, and by the company's retention of such report without objection that it is too late.—FRITZ v. QUAKER CITY MUT. FIRE INS. CO., Penn., 26 Atl. Rep. 14.

72. INTOXICATING LIQUORS—Evidence.—In a prosecution for unlawfully selling liquor, all evidence relating to the keeping and use of liquors, the glasses, bottles, and vessels in which liquor is or had been contained, is competent for the consideration of the jury.—COMMONWEALTH v. BROTHERS, Mass., 33 N. E. Rep. 386.

73. JUDGMENT BY DEFAULT—Setting Aside.—Where a judgment is entered by default against a non-resident defendant, who has not been personally served with summons within this State, the court has power to set it aside on a motion in the same action, if such motion is made within a reasonable time, and an independent action need not be brought.—NORTON v. ATCHISON, ETC. R. CO., Cal., 32 Pac. Rep. 452.

74. JUDGMENT—Lien — Priority.—Acts 1888-89, p. 60, provides that the owner of a money judgment, rendered by a court of record, may file in the office of the probate judge a certificate of the clerk of the court rendering the judgment, showing the amount thereof, which certificate shall be registered by the probate judge, and every judgment so filed and registered shall be a lien on the property of defendant in such county: Held, that where several judgments against a debtor are registered on the same day, the one first registered is entitled to priority over the other.—GERMAN SECURITY BANK v. CAMPBELL, Ala., 12 South. Rep. 436.

75. JUDGMENT — Restraining Enforcement.—A court of equity will not enjoin the collection of a judgment at law on account of mere irregularities or errors on the part of the trial court. Errors at the trial or in the proceedings must be corrected in the trial court, or by direct proceedings in the appellate court.— POLLOCK v. BOYD, Neb., 54 N. W. Rep. 560.

76. LANDLORD AND TENANT — Defective Premises.—The covenant of the lessee of rooms over the lessor's

livery stable to save the latter harmless "from any claim or damage arising from neglect in not removing snow and ice from the roof of the building or from the sidewalks" of the premises, does not give the lessee the sole occupancy of the sidewalk, nor bind him to keep the same in repair.—LEYDECKER v. BRINTNALL, Mass. ,33 N. E. Rep. 399.

77. LANDLORD AND TENANT.—One who merely receives, on an account against the tenant, money realized by him from the sale of agricultural products on which a lien for rent existed, is not liable for such rent.—JONES v. STEVENS, Miss., 12 South. Rep. 446.

78. LIMITATIONS—Claim against State.—Acts 1889, p. 265, § 1, provides that "any person or persons having or claiming to have a money demand against the State of Indiana, arising by law or equity, express or implied, accruing within 15 years from the time of the commencement of the action, may bring suit against the State therefor:" Held, that the limitation relates to the time when the claim arose, not to the time when the right of action accrued, which was when the act was passed, and hence there can be no recovery on a claim arising more than 15 years before the passage of the act.—MAY v. STATE, Ind., 33 N. E. Rep. 352.

79. LIMITATIONS— Land Conveyed to County.—The statute of limitations runs against a county in respect to land conveyed to it for its sole benefit, where such land has not been dedicated to public uses.—CITY OF BEDFORD v. WILLARD, Ind., 33 N. E. Rep. 368.

80. MANDAMUS TO ASSOCIATION—Expulsion of Member.—Where the constitution of an association gives to a member expelled by its board of trustees the right to appeal to the association from the action of the trustees, *mandamus* will not lie to compel the reinstatement of an expelled member, who has taken no appeal from the action of the board,though the order of expulsion may be void.—BENSON v. SCREWMAN'S BEN. ASS'N OF GALVESTON, Tex., 21 S. W. Rep. 562.

81. MANDAMUS—Contempt.—The mayor and aldermen of the city of Lathrop, Mo., having been served with a writ of *mandamus* to enforce the collection of a judgment against the city, made no response thereto, and the aldermen immediately offered their resignations, which were accepted by the mayor, and adjourned *sine die*, and no others were elected to take their places: Held that, as they are still the governing body of the city, they were guilty of contempt in refusing to comply with the writ of *mandamus*.—UNITED STATES v. GREEN, U. S. C. C. (Mo.), 53 Fed. Rep. 769.

82. MASTER AND SERVANT—Negligence.—In an action by a servant against his master's wife for personal injuries received when climbing up a ladder by her orders, it is prejudicial error to refuse to allow the plaintiff to show that the defendant gave the order knowing or having reason to know that plaintiff, in obeying the order, would be compelled to use an unsafe ladder.—STEINHAUSER v. SPRAUL, Mo., 21 S. W. Rep. 516.

83. MASTER AND SERVANT — Negligence. — Where a crane is slipped from slow gear to fast gear, through the negligence of fellow-servants, while a heavy weight is being raised, the master is not liable for injuries to one of the workmen, sustained by reason of their inability to hold the weight in the fast gear, and the consequent rapid turning of the crank; and the breaking of the handle of the crank, after the crane had slipped into fast gear, cannot render the master liable.—BARLOW v. STANDARD STEEL CASTING CO., Penn., 26 Atl. Rep. 12.

84. MASTER AND SERVANT—Negligence—Custom and Usage.—In an action by a brakeman against a railroad company for injuries received in going between cars to couple them after unsuccessfully attempting to use a stick, as required by defendant's rules, plaintiff cannot ask a witness simply whether it was the custom of defendant to so make the coupling, without first showing that the custom had existed for such a time as to raise the presumption that defendant acquiesced in it, and that plaintiff, who had only been in its employ one day, knew of and acted on it.—RICHMOND & D. R. CO. v. HISSONG, Ala., 12 South. Rep. 393.

85. MECHANICS' LIENS—Subcontractor.—Tho fact that the contractor has waived his right to a lien for repairs on a building, or that he has estopped himself from claiming it, will not affect a subcontractor's right to lien for work and material furnished by him, as his right thereto is not derived from nor dependent on the existence or non-existence of the lien of the contractor. —GREEN v. WILLIAMS, Tenn., 21 S. W. Rep. 520.

86. MORTGAGES — Conveyance by Auctioneer. — A mortgagor may, by a provision in the mortgage, authorize the auctioneer who shall sell the property under the power in the mortgage to execute a conveyance to the purchaser; the mortgage being a power of attorney to that end.—GAMBLE v. CALDWELL, Ala., 12 South. Rep. 424.

87. MORTGAGES—Power of Sale.—Equity will enjoin the execution of a power of sale in a mortgage upon a showing that the mortgagee is preceeding in an improper or oppressive manner, or is perverting the power from legitimate purposes; as where, after refusing repeated tenders of the amount due, and filing a bill to foreclose, he dismisses the bill without prejudice when ready for hearing, and advertises the land under the power, with the avowed purpose of compelling payment of another claim, not embraced in the mortgage, and the correctness of which is disputed.—MCCALLEY v. OTEY, Ala., 12 South. Rep. 406.

88. MUNICIPAL CORPORATION — Abatement of Nuisances.—A municipal corporation is not liable for tortuous acts committed by its officers and agents, unless the acts complained of were committed in the exercise of some corporate power conferred upon it by law, or in the performance of some duty imposed upon it by law. Such a corporation is liable in damages for a lawful and authorized act of its agents, done in an unauthorized manner, but not for an unlawful or prohibited act.—CITY OF ORLANDO v. PRAGG, Fla., 12 South. Rep. 368.

89. NEGOTIABLE INSTRUMENT—Bona Fide Purchaser. —A bank receiving a note before maturity, by regular indorsement from the payee, as collateral for a note of like amount which the payee wishes to have discounted, is a *bona fide* holder, and entitled to all the rights of an innocent purchaser, so long as the original note remains unpaid.—FIRST NAT. BANK OF CHATTANOOGA v. STOCKELL, Tenn., 21 S. W. Rep. 524.

90. NEGOTIABLE INSTRUMENT — Mortgage. — The indorser of a note secured by a mortgage given by the maker is liable, after judgment against the maker in a suit to foreclose, for any deficiency arising on the sale under foreclosure.—ALLIN v. WILLIAMS, Cal., 32 Pac. Rep. 441.

91. NOVATION—Change in Firm.—On the withdrawal of defendant from a partnership, and the taking in of another in his place, the new firm agreed to assume all the debts of the former firm, including the note in suit: Held, that this was not a novation, which requires the extinguishment of the former debt and the substitution of a new obligation, for the promise by the new firm to pay the note did not release defendant; and an allegation that plaintiff, in consideration of that promise, agreed with defendant to accept their liability in lieu of defendant's and release him, does not show an extinguishment of the original debt.—MORRISON v. KENDALL, Ind., 33 N. E. Rep. 370.

92. OFFICER— Policemen.—A policeman of a municipal corporation is a "civil officer" within the meaning of Mill & V. Code, § 5526, which provides that such officer who shall arrest and prosecute to conviction any person guilty of carrying a bowie knife shall be entitled to $50, to be taxed against defendant —PORTERFIELD v. STATE, Tenn., 21 S. W. Rep. 519.

93. OLEOMARGARINE—Constitutional Law.—Act Cong. Aug. 2, 1886, providing for licensing by the internal revenue department of the sale of oleomargarine, does not render the prohibition or regulation of such traffic

by State legislation unconstitutional.—COMMONWEALTH v. CRANE, Mass., 33 N. E. Rep, 389.

94. PARTY WALLS—Where a party purchases a lot on which there is a party wall built by the owner of the adjoining lot, with notice, either actual or constructive, of a contract between his grantor and such adjoining lot owner that the grantor will pay one-half the costs of constructing the wall whenever he shall use it, the agreement further stipulating that the covenants therein shall extend to and be binding upon each party, his heirs, administrators and assigns, such purchaser is liable for the amount agreed to be paid by the grantor in case he makes use of the wall. — GARMIRE v. WILLY, Neb., 54 N. W. Rep. 562.

95. PHYSICIANS—Necessity of License.—Under Crim. Code, § 4078, as amended by Acts 1890-91, p. 857, providing that "any person practicing medicine or surgery in this State without having first obtained a certificate of qualification from one of the authorized boards of medical examiners of this State shall be guilty of a misdemeanor," a license to practice medicine and surgery is not necessary.—NELSON v. STATE, Ala., 12 South. Rep. 421.

96. PUBLIC LANDS—Entries of Improved Lands.— An entry on inclosed and improved land, occupied and claimed by another under a certificate from a railroad company, is not authorized by 23 U. S. St, at Large, 321, forbidding the fencing of public land,or preventing settlement thereon; but the person so entering is a naked trespasser, though after entry he files a statement of pre-emption.—LAURENDEAU v. FUGELLI, Wash., 32 Pac. Rep. 566.

97. RAILROAD COMPANIES—Negligence.—Though the running of a train over a public crossing, or within the limits of a city, at a prohibited speed, and without giving the signals required by statute or ordinance, amounts of itself, to simple negligence, it may, under particular circumstances, be gross and wanton negligence, rendering the company liable for injuries to a person who is guilty of contributory negligence; and the case is one for the jury, where the injury was inflicted at a frequently used street crossing in a populous city, and where there is some evidence that the train was backing at the rate of 25 or 30 miles an hour, in violation of an ordinance limiting the speed to 4 miles, and that signals were not given as required by ordinance.—LOUISVILLE, & N. R. CO. v. WEBB, Ala., 12 South. Rep. 374.

98. RAILROAD COMPANIES — Consolidation. — Liabilities.—As the corporation into which several railroad companies become merged by consolidation assumes, by implication, all the debts and liabilities of the several companies, plaintiff, in an action against the consolidated company for personal injuries resulting from the negligence of one of the original companies, need not allege an express assumption of such liability by defendant in the articles of consolidation.—CLEVELAND, C. C. & ST. L. RY. CO. v. PREWITT, Ind., 33 N. E. Rep. 367.

99. RAILROAD COMPANY—Contributory Negligence.—Though in actions to recover for personal injuries contributory negligence should be pleaded specially, yet where the parties proceed to a trial of such action on the issue of contributory negligence without such pleading it will be deemed to have been waived. Railroad Co. v. Farmer (Ala.), 12 South. Rep. 86, followed. It is negligence *per se* for a brakeman to jump from the pilot of a moving engine onto the track in front to attend to a switch, and evidence that it was the custom on defendant's road and other well-regulated roads for brakemen when doing switch work to ride on the pilot, and to leave it in order to do the switching before the engine came to a full stop, was properly excluded.— ANDREWS v. BIRMINGHAM MINERAL R. CO., Ala., 12 South. Rep. 429.

100. RAILROAD COMPANY—Contributory Negligence.—A railroad employee, on the pilot of an engine moving backwards, and drawing freight cars, is guilty o contributory negligence where, without real necessity therefor, he steps off in the dark, and at a place with which he is unacquainted, without using his lantern, which he has in his hand, and by the use of which he could see a low embankment so close to the track as to render an attempt to alight dangerous.—BURGIN v. LOUISVILLE & N. R. CO., Ala., 12 South. Rep. 395.

101. RAILROAD COMPANY — Defective Appliances.—A railroad is liable for the death of a switchman killed in the performance of his duty while attempting to get on the footboard of a slowly moving locomotive if the company knew, or by the exercise of ordinary care might have known, that the footboard which it had provided deceased to ride on was defective or unsafe by reason of its slanting condition.—O'MELLIA v. KANSAS CITY, ST. J. & C. B. R. CO., Mo., 21 S. W. Rep. 503.

102. RAILROAD COMPANY—Fires—Evidence.—The evidence warranted by the verdict. It being alleged that the burning of the plaintiff's property was caused by sparks which escaped from one of two engines described in the declaration, by reason of the defective condition of the engine, and the negligent manner in which it was operated, the refusal of the court to admit evidence that other engines of the defendant besides these two, and not shown to be of like construction, had at other times emitted sparks at or near the same place, is not ground for a new trial.—INMAN v. ELBERTON AIR LINE R. CO., Ga., 16 S. E. Rep. 958.

103. RAILROAD COMPANY—Fires—Negligence.—Where plaintiff's servant, employed to manage his farm, sees a fire in a stump near defendant railroad, which passes through the farm, which fire has been started by a passing locomotive, and knows it is likely to spread to an adjacent field, but goes away without attempting to extinguish it, and the crop in the adjacent field is burnt, he is guilty of negligence, and plaintiff cannot recover, even if defendant's servants afterwards saw the same fire, and neglected to extinguish it.—ILLINOIS CENT. R. CO. v. MCKAY, Miss., 12 South. Rep. 447.

104. RAILROAD COMPANY—Injury—Damages.—A complaint in an action against a railway company for injuries received while employed on a construction train does not disclose such a state of facts as to put plaintiff on his guard, and prevent his recovery on the ground that he accepted the risk of his employment, when it alleges that defendant had negligently failed to put sufficient ballast and ties under the track; that the ties were placed too far apart, and the roadbed was bad; that defendant knew such construction was insufficient and dangerous; that plaintiff was young, and inexperienced in railroading, and unaware of its dangers, and knew and could know nothing of the extra hazard to which he exposed himself when he took employment on the train; and that defendant, knowing all the facts, gave him no warning as to the dangers of his employment or the unsafe condition of the road.—EVANSVILLE & R. R. CO. v. MADDUX, Ind., 33 N. E. Rep. 346.

105. RAILROAD COMPANY—Street Railroads— Municipal Control.—The street railway of the city of Lincoln is so far under the control of the municipality that the latter may fix the rates of fare for passage over said railway, and may require tickets, 6 for 25 cents, to be kept for sale by each conductor of a street car. A street railway has no depots. Its stopping places are on each street corner, and it transacts its business with the public in its cars, and its tickets should be kept for sale where it transacts its business with the public.—STERNBERG v. STATE, Neb., 54 N. W. Rep. 553.

106. RAILROAD COMPANY — Negligence. — Under the statutes of this State a railroad company is liable for injuries to the person of an employee by the negligence or misconduct of other employees of the company, without negligence on his part, whether such injuries are connected with the running of trains or not.—GEORGIA RAILROAD & BANKING CO. v. MILLER, Ga., 16 S. E. Rep. 939.

107. RAILROADS—Municipal Aid.—As an act authorizing counties, cities, and towns to subscribe to the capital stock of a railroad company, on condition that a majority of votes are cast in favor of such subscription at an election held for that purpose, is constitutional, an act authorizing a compromise by a county with the holders of bonds issued by it in payment of its subscription is valid.—BROWN v. TINSLEY, Ky., 21 S. W. Rep. 535.

108. REMOVAL OF CUASES—Separable Controversy.—In a suit by a city to condemn land occupied by a railroad corporation of another State as lessee of a railroad corporation of the same State when the main issue is as to the right to condemn, the controversy as to the foreign corporation is not separate, so as to give it a right to remove the cause to a federal court, although the home corporation files a disclaimer alleging that the lease is for 99 years, renewable forever, and that the foreign corporation is practically the owner of the property, and will suffer all the damage that may be inflicted; for the home corporation, as reversioner, still has an interest in the property.—CITY OF WASHINGTON v. COLUMBUS & C. M. R. CO., U. S. C. C. (Ohio), 53 Fed. Rep. 674.

109. REMOVAL OF CAUSES—Time of Removal.—It is not necessary, in order to the removal of a cause, that any pleading on behalf of defendant should first be filed in the State court; and decisions by a State court that such filing is necessary are not binding upon the federal courts. — EGAN v. CHICAGO, M. & ST. P. RY. CO., U. S. C. C. (Iowa), 53 Fed. Rep. 672.

110. SALE — Acceptance of Goods. — One who takes goods consigned to him out of the possession of the carrier, and has them hauled to his own place of business, and afterwards sends his check to the consignor for other goods purchased by him, without any reference to the goods so taken possession of by him, is liable for their price, though he may not have ordered them.—INDIANA MANUF'G CO. v. HAYES, Pa., 56 Atl. Rep. 6.

111. SALE—Counterclaim.—Defendant set up by way of counterclaim to an action for the price of fertilizer sold under contract that plaintiff had failed to deliver the whole amount contracted for, and that defendant had contracted to sell all of it to its customers at the place of delivery, at a profit: Held, an insufficient counterclaim, in that it was further necessary to show the market value of the fertilizer at the place of delivery at the time plaintiff was to have delivered it, and that the persons to whom defendant had contracted to sell it were responsible, and could have been compelled to respond in damages for failure to perform their agreement to purchase.—RAISIN FERTILIZER CO. v. J. J. BARROW, JR., CO., Ala., 12 South. Rep. 388.

112. SEDUCTION—Wife—Special Damages.—In an action for alienating the affections of plaintiff's wife, it is error to direct the jury that, if they find that plaintiff contracted a venereal disease from his wife on account of her association with defendant, they should consider such fact in estimating the damages in the absence of allegations in the petition of special damages sustained by reason of such fact.—DOWDELL v. KING, Ala., 12 South. Rep. 405.

113. TAXATION—Exemption in Charter of Bank.—The charter granted in 1856 by the State of Tennessee to the Bank of Commerce, which provides that the bank "shall have a lien on the stock for debts due it by the stockholders, and shall pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes," exempts from taxation the property of the bank as well as the individual property of the shareholders in the corporate stock and its shares. —STATE OF TENNESSEE v. BANK OF COMMERCE, U. S. C. C. (Tenn.), 53 Fed. Rep. 735.

114. TAXATION—Judgment— Names.—Under Rev. St. 1889, § 7682, which expressly provides that tax suits shall be brought against the owner of the land, a judgment against "Siemson," when the owner's name is "Simonson," is insufficient to support a tax title, since the two names are not *idem sonans*.—SIMONSON v. DOLAN, Mo., 21 S. W. Rep. 509.

115. TAX-SALES—Purchase of Officer.—A purchase of land by a deputy sheriff, for his own benefit, at a tax sale conducted by him is void, and he cannot transfer his purchase to another, so as to invest her with title.—STRAUS v. HEAD, Ky., 21 South. Rep. 537.

116. PARTNERSHIP — Trover. — One partner cannot maintain trover for the recovery of property conveyed by his copartner in fraud of the partnership.—WHITE v. CAMPBELL, R. I., 26 Atl. Rep. 40.

117. WAREHOUSES—Grain Inspection.— Act June 22, 1889, changing the name of the board of railroad commissioners, providing for the organization of "public warehouses," and regulating the warehousing and inspection of grain "in public warehouses," authorizes such board to appoint a chief inspector of grain for the State, provides for licensing the operator "of a public warehouse," and empowers the chief inspector to appoint assistant inspectors. Section 7 makes it the duty of persons doing "a public warehouse" business to receive "for storage" any grain tendered in the customary manner, and not to discriminate between persons, and requires charges to be uniform, regardless of lots so received: Held, that such statute does not inhibit private inspection in a city of the State in which no public warehouse is situated, though such city has been made an inspection district, and assistant inspectors are there located, and ready to inspect grain, as contemplated by such act.—STATE v. SMITH, Mo., 21 S. W. Rep. 493.

118. WILL—Construction — "Issue." — H bequeathed money in trust to P, who was to invest the same in bank stock, and pay the income thereof to R during life, and at her death to pay and deliver the trust property to the lawful issue of R, then alive: Held, that the property should be distributed among the children and grandchildren of R, since the word "issue," unconfined by any indication of intention, includes all descendants.—PEARCE v. RICKARD, R. I., 26 Atl. Rep. 38.

119. WILLS—Estate. — Testator directed his estate to be divided into three equal shares, and gave one to his son, G, and one to his daughter, S, "and one share to my grandson, C, provided he attains the age of twenty-one years. Should my grandson die without issue, then I will and direct that the share he would have received shall be divided equally between G and S:" Held, that the fee of an undivided third vested in C at testator's death, subject to divestment in case he did not live till he was 21.—BOLING v. MILLER, Ind., 33 N. E. Rep. 354.

120. WILLS—Legacy to debtor.—A legatee's indebtedness to the estate may be set off against the legacy, unless it clearly appears that this was not intended by the testator.—IN RE BAILEY'S ESTATE, Penn., 26 Atl. Rep. 23.

121. WILLS—Revocation by Marriage.—A will, not made in contemplation of matrimony, is revoked by the marriage of the testator and birth of a posthumous child subsequently to the making thereof.—BELTON v. SUMMER, Fla., 12 South. Rep. 371.

122. WILLS—On the contest of a will dictated by testator, showing knowledge by him of the persons who were the objects of his bounty, the property he possessed, the advancements made to each of his children, and the disposition he desired to make of his property, evidnece given by one of contestant's witnesses that testator was not competent to engage in complicated business transactions when the will was executed, and by another that he was aged and infirm, and that his mind was not as good as in previous years, is not sufficient to warrant the submission of the question of testamentary capacity to the jury.—MADDOX v. MADDOX, Mo., 21 S. W. Rep. 495.